TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 83.

JOSEFA DIANA MARTINEZ, JULIO N. CHARDON, CARLOS CABRERA, AND TOMAS TORRES, APPELLANTS,

vs.

LA ASOCIACION DE SEÑORAS DAMAS DEL SANTOS ASILO DE PONCE.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR PORTO RICO.

FILED MAY 14, 1907.

(20,714.)

(20,714.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1907.

No. 312.

JOSEFA DIANA MARTINEZ, JULIO N. CHARDON, CARLOS CABRERA, AND TOMAS TORRES, APPELLANTS,

vs.

LA ASOCIACION DE SENORAS DAMAS DEL SANTOS ASILO DE PONCE.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR PORTO RICO.

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1 At a stated term of the District Court of the United States for Porto Rico, begun and held at the city of San Juan, in the said district, on the eighth day of October, in the year of our Lord one thousand nine hundred and six, and in the one hundred and thirty first year of the Independence of the United States of America.

Present: The Hon. Bernard S. Rodey, Judge.

Among the proceedings had was the rendition of a final decree on the 25th day of February, 1907, in the following cause, to wit:

ASOCIACIÓN DE SEÑORAS DAMAS DEL SANTO ASILO DE PONCE, Complainant,

vs.

JOSEFA DIANA Y MARTINEZ, JULIO N. CHARDÓN, CARLOS CABRERA, and TOMÁS TORRES, Defendants.

Be it remembered that heretofore, to wit, on July 7, 1905, came said complainant by her solicitors, Pettingill & Leake and Angel Acosta Quintero and filed their bill of complaint which is as follows, to wit:

Bill of Complaint.

To the Honorable Chas. F. McKenna, Judge of the Court aforesaid, Sitting in Chancery:

2 Asociación de Señoras Damas del Santo Asilo de Ponce, a charitable corporation organized and existing under the laws of the Kingdom of Spain, brings this its bill of complaint against Josefa Diana y Martínez, Julio N. Chardón, Carlos Cabrera and Tomás Torres, citizens of Porto Rico, defendants and thereupon your orator complains and says:

First. That on the 17th day of December 1873, Juan Bautista Silva, who then lived in the jurisdiction of Santa Isabel, Porto Rico, and who had accumulated during his life time and then owned a large amount of real and personal property including that hereinafter described, and who remained unmarried and without legal heirs up to the day of his death, made and executed his last will and testament before the Notary Don Francisco Parra.

That in said last will and testament he declared, among other things, that he desired his estate to be preserved intact, and after making certain bequests, devised all his property, both real and personal, to his good friend José Apolinario Laboy, as his sole voluntary heir, to be held and possessed by him during his life time upon certain conditions expressed in said last will and testament as follows:

"*First.* That the net income of said property, after satisfying the municipal and other taxes which should be legally imposed, shall be divided in two equal parts, one for his heir, Laboy, as a proper recompense for the careful administration and guardianship of the

interests of said estate, and the other half for the benefit of the sick poor of the Santo Asilo de Caridad de las Damas de Ponce, the liquidation of which income, and the delivery of the latter part to be made at the end of each year by the said heir, without outside intervention of any kind, in compliance with the dictates of
3 his conscience, and because the income from properties of the kind which he devised depends upon whether the seasons are favorable and the rains in that vicinity sufficient.

Second. That the special object of the testator being the preservation of his estate without division, said estate should pass, upon the death of said José Apolinario Laboy into the custody and possession of such person as should be named in the last will and testament of said Laboy, with the same powers and for the same object which said testator had expressed in his said will; and this power of substitution which said testator gave to said Laboy should be transmitted successively by will or other method of equal effect by each person so named to discharge said trust.

Third. That if on account of this requirement of substitution not being opportunely fulfilled according to the wish of the testator, or by reason of claims interposed by any relative or stranger, or by reason of any other cuase, motive or claim, it should be desired that said inheritance should be made or considered vacant or undisposed of according to said will, it was the will of the testator that in such case said estate should pass at the death of said José Apolinario Laboy to said Santo Asilo de Caridad de las Damas de Ponce as the heir of said testator by substitution."

All of which will more fully appear from a true and correct copy of the will herewith filed marked "Exhibit A."

Second. Your orator further represents that the said Juan Bautista Silva died on the 15th day of May, 1875, without having revoked said last will and testament or made any other modifying or changing the same in any respect, and that upon said death the said Juan Apolinario Laboy entered into the custody and possession of all and si-gular the goods and property belonging to the said Juan Bautista Silva at the time of his death in accordance with the terms of his last will and testament as above set forth; that said Laboy carried out the provisions of said last will and testament touching the special bequests therein provided for and continued during
4 his life time to administer the said estate in all respects according to the provisions of the said last will and testament, delivering to your orator the half of all the net income derived by him from said estate.

Third. That the goods and property left by the said Juan Bautista Silva at his death, and passing into the possession of said Juan Apolinario Laboy under the terms of said will, were certain personal property and tracts of real estate, the latter being described as follows:

"A. The farm upon which the testator lives, situated in the barrio of Boca, Santa Isabel, known by the name of "Mejías," containing two hundred and eighteen and a half cuerdas, purchased from Don Federico Capó and wife, in 1864, to which said testator had added

adjacent parcels from time to time until said farm included four hundred and fifty cuerdas.

B. Another parcel of land in the same barrio and jurisdiction, containing an area of one hundred and twenty six cuerdas.

C. Another parcel of land in the same jurisdiction of Santa Isabel in the place called "Coto" containing fifty and one half cuerdas of land.

D. A parcel of land in the barrio of Capitanejos, jurisdiction of Juana Díaz, containing one acre and a half, which is bounded on the south by the carretera which leads *of* Santa Isabel and on the remaining sides by land of the Sucesión of Don Fernando Labastide, which small parcel is now leased to the owners of the hacienda "Bocachica."

Fourth. That among the bequests made by said Juan Bautista Silva in his said last will and testament, was a bequest of fifty acres of land forming a part of the above described farm No. "A," containing four hundred and fifty cuerdas, to two daughters of a woman who had formerly been the slave of the testator, and, the said
5 fifty acres so bequeathed being deducted the remainder of said property numbered "A" contained an area of four hundred cuerdas, which is the same property, and with the same boundaries hereinafter to be described, as included in the properties to which the defendant Josefa Diana y Martinez fraudulently obtained a title of possession.

Fifth. That shortly after the entry of said Juan Apolinario Laboy into the possession and control of the estate so left to said Juan Bautista Silva, as aforesaid, to wit, about the 30th day of September, 1875, the said Juan Apolinario Laboy, in further compliance with the said last will and testament of his said testator, made and executed his last will and testament before the same Notary, Francisco Parra, wherein said Laboy stated that having come into possession of the estate left by the said Silva, he, by said Notarial act, proceeded to comply with the conditions stated in the last will and testament of said Silva, by naming as the heir of said Silva in substitution for himself, his wife Dominga Fernandez y Verdés, or in case of her death before his, or other legal impossibility he named in her stead his foster-son José Laboy, thereby conferring upon said substitute heir the same ample powers which said Silva had conceded to him by his last will and testament hereinbefore referred to.

Sixth. That upon the death of said Juan Apolinario Laboy, which occurred in the month of —— A. D. 188–, the said Dominga Fernández y Verdés, who was his widow and the person named in his will as the person selected to assume in his stead the duties fixed by said will of Juan Bautista Silva at once entered upon the
6 possession and administration of the said estate of Silva and continued to possess and administer said estate and to deliver to your orator, in accordance with the terms of said last will of said Silva, the half of the net income of said estate until the 15th day of January, 1891, on which date she died. But, said Dominga Fernandez y Verdés had failed to comply with the provisions of said last will and testament of said Silva whereby she was required

upon taking possession of said estate to execute a testament naming the person who should succeed her in the performance of the duties specified in said last will of said Silva, and the said Dominga Fernández y Verdés, so died, as aforesaid, without having made or executed any last will or testament for any purpose whatsoever.

Seventh. That by the said failure of the said Dominga Fernández y Verdés to execute a last will and testament naming such successor in the management and possesion of the estate of said Juan Bautista Silva, the condition of said will whereby such persons were successively to be made for the performance of said duties was violated and became of no further force or effect, but in place thereof the third condition of said will hereinbefore recited became operative and effective whereby it was provided that in such case the whole of said estate of said Juan Bautista Silva should pass to your orator for the benefit of the indigent poor under its care. And that from the date last aforesaid, your orator became entitled, under the terms of said will of said Juan Bautista Silva to the possession control and full dominion title of all the estate then remaining of what had been left by said Silva at his death including the real estate here-
7 inbefore described save and except the fifty acres especially bequ-athed by said Silva as aforesaid.

Eighth. That notwithstanding the limitations upon the power of said Juan Apolinario Laboy to name a single person in his last will and testament as his substitute under the terms of the last will of said Silva, and notwithstanding that by the entrance of his said wife, Dominga Fernandez y Verdés upon the performance of said duties as his substitute named in his said will, his power of appointment became exhausted and the appointment of his said foster-child, José Laboy, y Fernandez, in the alternative in case his said wife for any reason did not qualify became *functus oficio,* the said José Laboy y Fernandez claiming and pretending to act under and by virtue of the alternative appointment aforesaid, wrongfully and fraudulently took possession and control of the said estate of said Silva and continued to control and manage the same from the date of the death of said Dominga Fernández y Verdés up to the date of his death, which occurred on the 13th day of November, 1903.

Ninth. That the said José Laboy Fernandez, after taking possession of said estate, as aforesaid, and in further pretended pursuance of the provisions of said last will and testament of said Silva, made and executed on the 4th day of October, 1893, a public document called a "substitution of heirship," wherein he recited that having taken possession of said estate in succession to Dominga Fernandez y Verdés, he must comply with the provisions of the will of said Silva as to the appointment of his successor or as substituted heir of said Silva, and for that purpose named his legitimate wife the defendant, Josefa Diana y Martínez, attempting to
8 confer upon her the same powers which he claimed to have been conferred upon him in accordance with the said last will of said Silva; and on the 11th day of November, 1903, the said

José Laboy Fernandez made and executed his last will and testament before the Notary, Angel Acosta Quintero, whereby he made testamentary disposition of certain individual property not connected with said estate of said Silva, and further declared that all of the property in his possession or under his control belonged to the estate of said Juan Bautista Silva, of which he claimed to be the only representative, and made reference to the public document hereinbefore referred to as a substitution of heirship, and attempted to ratify and confirm the same in said last will and testament.

Tenth. That upon the death of said José Laboy Fernandez on the date aforesaid, the defendant, Josefa Diana Martinez, claiming and pretending to act under the power attempted to be conferred by the public document and last will and testament of her husband aforesaid, entered upon the control and management of said estate of said Juan Bautista Silva, although such act and claim on the part of said defendant was wholly fraudulent and unwarranted, and has continued in possession and control of the same up to the present time, except to the extent and in the manner hereinafter explained. But your orator alleges that far from recognizing the rights of your orator to the said estate and the possession, control and dominion thereof, as hereinbefore alleged, or even to the half of the net income therefrom, as accounted for by her predecessors,

has refused to recognize any rights of your orator in said
9 estate, has attempted to execute leases of portions of said property for long terms of years for inadequate rentals, has fraudulently obtained by judicial process a possessory title to nearly all of the real estate belonging to said estate of Silva, and has used every effort and means to appropriate to herself the assets of said estate which legally belonged under the conditions of said last will and testament of said Juan Bautista Silva to your orator; all which wrongful acts and doings are contrary to equity and good conscience, as will be hereinafter more specifically set forth.

Eleventh. That on the first day of February, 1894, the said José Laboy y Fernandez, pretending to act as her — in substitution of said Juan Bautista Silva, made and executed a lease to one Domingo Gonzalez y Díaz of the tract of land of one hundred and twenty six cuerdas hereinbefore described under letter "B," for a stated term of five years; that thereafter said lease was extended for a further term of ten years, and before the expiration of said term, by various transfers, became the property of the defendant Carlos Cabrera y Paz, who, on the 6th day of February, 1901, attempted and pretended to obtain from said José Laboy y Fernandez a further extension for the term of six years and a half from the first of August, 1909 to the 31st day of January, 1916; the rent agreed to be paid from the present time until said year 1909, being eighty four dollars ($84.00) up to the year 1909 and from said year 1909 to the year 1916 at the same rate. Yet your orator alleges that in said year 1901 when the said extension of six and a half

years was granted to the defendant Carlos Cabrera, the
10 rental value of said land had largely increased over its value in the year 1894, and the said rental of $84.00, eighty four

dollars per year, even in the year 1894 was so far below a just and reasonable rental as to constitute said contract an unreasonable and fraudulent one; and that by virtue of the contents of said last will and testament of Juan Apolinario Laboy and its reference to the terms of said last will and testament of said Silva, the defendant Carlos Cabrera was charged with notice of the want of title in the said José Laboy y Fernandez, and his illegal possession and control of said estate at the time said lease was made, by reason whereof, said lease is wholly null and void, and the said defendant Carlos Cabrera is liable to account to your orator for the reasonable rental of said tract of one hundred and twenty six cuerdas from the date of his first entry into possession thereof, to wit, the 31st of December, 1900.

Twelfth. That on the first day of February 1898, the said José Laboy y Fernandez further pretending to act as heir by substitution of said Juan Bautista Silva, made and executed a lease to the defendant Tomás Torres, of the tract of land of fifty and one half cuerdas hereinbefore described under letter "C," for a stated term of five years beginning from the 1st of August of the same year, and before the expiration of said term, to wit, on the 16th day of February, 1901, said defendant Tomás Torres attempted and pretended to obtain from said José Laboy Fernandez an extension of said term for the period of ten years and a half dated from the 1st of August, 1900, to the 1st of August, 1911; the rent agreed
11 to be paid therefor being at the rate of Thirty Dollars ($30.00) per year, being the same agreed upon in the year 1898. Yet your orator alleges that in said year 1901 when said renewal contract of lease for ten years and a half was entered into, the rental value of said land had largely increased over its value in the year 1898, and the said rental of Thirty Dollars per year was so far below a just and reasonable rental as to constitute said contract an unreasonable and fraudulent one; and that by virtue of the contents of said renewal lease of the 16th of February 1901 and its reference to the terms of said last will and testament of said Juan Bautista Silva and his devisee, Juan Apolinario Laboy, the defendant Tomás Torres was charged with notice of the want of title in his lessor, José Laboy Fernandez, and of his illegal possession and control of said estate at the time said lease was made, by reason whereof said lease is wholly null and void and the said defendant Tomás Torres is liable to account to your orator for the reasonable rental of said tract of fi-ty and one half cuerdas from the date of his first entry into possession thereof, to wit, the first day of August, 1898. The exact description of the above tract of fifty and one half cuerdas is as follows:

A tract of land, without particular name, situated in the barrio "Coto" municipal jurisdiction of Santa Isabel, fenced, and containing fifty and one half cuerdas, more or less, equivalent to 19 hectareas, 84 areas and 85 centiareas, bounded as follows: From a stake of "guayacán" in the north-west corner, the boundary of the lands of Don Juan Cortada, to the west by the quebrada of said

Cortada to a stake of "hueso," bounding the same lands of Cortada; thence on the west side of the quebrada along the line that divides it from the land of said Cortada, to the south to a "guamá" which is a boundary of the lands of said Cortada and of Don Ramón Torres; thence from said "guamá" along the line bounding the lands of said Torres easterly to a stake of "guayacán," which is also a corner, and which serves as a boundary of the lands of the said Torres; thence by way of the boundary of said Torres on the western side, direction north, to the stake of "guayacán," which was the beginning point.

12 Thirteenth. That on the 9th day of January, 1904, the defendant Josefa Diana Martinez pretending to act as the voluntary heir of her husband the said José Laboy y Fernandez, by virtue of the substitution of heirship and the last will and testament of her said husband hereinbefore referred to in paragraph ninth of this Bill, made and executed a lease to the defendant Julio N. Chardón of the two tracts of land, one containing four hundred cuerdas and the other containing one hundred and twenty six cuerdas, heretofore described under letters "A" and "B" for the term of fifteen years from the date of said instrument, thus terminating on the 9th day of January, 1919, the rent agreed to be paid therefor being two hundred and forty dollars ($240.00) per year for the tract of four hundred cuerdas, and eighty four dollars ($84.00) per year for the tract of one hundred and twenty six cuerdas. And your orator alleges that at the time of making said lease the rent so reserved for said tracts of land was so far below a just and reasonable rental as to constitute said contract an unreasonable and fraudulent one; and that by virtue of the recitals contained in the lease aforesaid, the defendant Julio N. Chardón was charged with notice of the want of title in his lessor, the defendant Josefa Diana Martinez, and of her illegal possession and control of said estate at the time said lease was made, by reason whereof said lease was wholly null and void, and the said defendant Julio N. Chardón should be required to account to your orator for the reasonable rental of the said first mentioned tract from the date of said lease, the second tract having been sublet by him, as set forth in the succeeding paragraph hereof.

13 Fourteenth. That on the 20th of January 1900, the defendant Julio N. Chardón, pretending to act as the lessee of the defendant Josefa Diana Martinez, made and executed a sub-lease of the said one hundred and twenty six cuerdas, heretofore referred to, and more particularly described under the letter "B," for the term of fi-teen years from the date of said instrument to terminate on the 9th day of January 1919, for the agreed upon rental of Eighty Four Dollars ($84.00) per year for said tract of one hundred and twenty six cuerdas. And your orator alleges that at the time of making said lease and sub-lease the rent so reserved for said tracts of land was so far below a just and reasonable rental as to constitute said contract an unreasonable and fraudulent one, and that by virtue of the recitals contained in the lease aforesaid, the said defendant Carlos Cabrera was charged with notice of the want of title of his lessor, the defendant Julio N. Chardón, and of the want of title of said original

lessor, the defendant Josefa Diana Martinez, and of her illegal possession and contract of said estate at the time said lease was made, and of the defendant Julio N. Chardón'- illegal possession and control of said tract at the time said sub-lease was made, by reason whereof said sub-lease was wholly null and void, and the said defendant Carlos Cabrera should be required to account to your orator for the reasonable rental of the said above mentioned tract of one hundred and twenty six cuerdas from the date of said sub-lease thereof.

Fifteenth. That during the year 1903 the defendant Josefa Diana Martinez in order to further carry out her fraudulent purpose
14 of claiming as her own the tract of land hereinbefore referred to, of which she and her husband before her were unlawfully in possession in fraud of the rights of your orator, presented to the District Court of Ponce her petition for a "título posesorio," in her own name to said first two described tracts of land, the same being exactly described in her petition as follows:

A tract of land which lies in the jurisdiction of Santa Isabel, barrio of "Boca," consisting of four hundred cuerdas, equivalent to 147 hectareas, 21 areas and 49 centiareas, a part planted with guinea grass and the remainder uncultivated, having a wooden house covered with thatch, in bad condition, entirely surrounded by a fence of wood and palmetto; bounded on the east by the bed of the river "Coamo"; on the south with lands of Baldomero Alvarez, José Toro and the shore of the sea; on the west with lands of Juan Cortada; on the north with lands of Luis Burgos, Ramón Torres and the said Cortada.

And also: "A tract of land bounded on the north with lands of Carlos Cabrera, formerly of Jaime Bas; on the south with more lands of the said Cabrera and by the sea; on the east with other lands of the said Cabrera; on the west with lands belonging today to Julio Mercado, formerly to the Sucesión Monserrate and Jaime Bas; containing one hundred and twnety six cuerdas, equivalent to 29 hectareas, 52 areas and 30 centiareas, situated in the barrio "Boca," municipality of Santa Isabel, and of a value of six thousand dollars."

That said expediente of possession was proceeded with by said defendant and without the knowledge of your orator, and on that account no opposition being made the said Court was fraudulently induced to grant to said defendant a possessory title, which she thereafter presented to the Registrar of Property for the District of Ponce, and obtained their inscription in said registry, such inscription being made as to said first described tract under the number 291,
15 folio 187 and over the Book 8 of Santa Isabel, first inscri-tion, and as to the second under the number 298, folio 144 of book 8 of Santa Isabel.

Sixteenth. That thereafter, in order to more firmly establish her fraudulent claim of title to the said properties legally belonging to your orator, the said defendant Josefa Diana Martinez presented a further petition to the Court aforesaid for the purpose of having decreed in her favor the dominion title to the two tracts of land above described, and also to the third tract of fifty and one half cuerdas, the description of which is contained in paragraph 12 of this Bill.

But your orator obtained information of this last petition before said defendant was able to obtain an *ex parte* decree upon the same and in due time entered its opposition to the granting of said petition, and thereupon the Court aforesaid after hearing the parties refused the prayer of said defendant's petition, and decreed that she is not entitled to a decree granting her a dominion title to said tract of land.

Seventeenth. That on the 15th of April 1878, Federico Pascual, then the owner of the property hereinafter described, made and executed a mortgage in favor of the estate of said Juan Bautista Silva for the sum of six hundred pesos provincial money, upon the following described real estate, to wit:

"A house and lot situated on Union Street, fronting east, of the city of Ponce, and bounded on the left by the lot belonging to the Señoritas Capó and a lot of the Sucesion of Don José de la Rosa; on the west and rear by the same lot of said Sucesion; on the right by a property of Don Joaquín Ferrán, and the Sucesion of Rafael León."

Said mortgage is inscribed in the registry of property of
16 the district of Ponce under the number 4389, folio 93 and over, of volume 110 of said city of Ponce, 2nd inscription. Upon this mortgage interest was paid by the mortgagor, or his representatives, up to the year 1894, and the principal thereof with interest from said date is still due, and the right and title to the ownership of said mortgage, like that of the parcels of real estate hereinbefore described, has been legally vested in your orator since the death of the said José Apolinario Laboy.

Eighteenth. That on the 28th day of August 1888, José Laboy y Fernandez, then the owner of the property hereinafter to be described, executed in favor of the said Dominga Fernandez y Verdés, a mortgage for one thousand eight hundred and fifty pesos, current money, on the following described property, to wit:

A farm of six and one half cuerdas, with a wooden house thereon, situated in the barrio of "Machuelo Abajo," of the municipal jurisdiction of Ponce, bounded on the south by the public road; on the east by the river Bucaná; on the west with a lane and lands of the Sucesión Moreu; and on the north by another lane that divides it from several properties.

That said mortgage was inscribed in the registry of property of the city of Ponce at folio 63 and over, book 39, property number 1928, third inscription.

That on the third day of May, 1890, the property above described was ceded and transferred by the mortgagee to the mortgagee, Dominga Fernandez y Verdés, in payment of the principal of said mortgage and its interest to that date, and this cession is inscribed in the said registry of property at folio 65, book 39 of Ponce, third inscription, property number 1928.

17 That the said Dominga Fernandez y Verdés, by a public notarial instrument dated the 16th of October, 1888, acknowledged that the aforesaid sum of money loaned by her to the said José Laboy y Fernandez belonged to the estate of the deceased Juan Bautista Silva, administered first by her husband, Apolinario Laboy,

and later by herself as substitute heir, in accordance with the will of said Silva, and that the half of the proceeds from said mortgage loan in the shape of interest thereon at the rate of twelve per cent. per annum belonged by right to your orator. Your orator shows that said Dominga Fernandez y Verdés continued to pay the half of the sums realized as interest on said mortgage to your orator even after the aforesaid cession of the mortgaged property as aforesaid to her by the mortgagor José Laboy y Fernandez on May 3rd, 1890, and up to

but that thereafter and on the
ceased to pay said half of said proceeds.

Your orator shows that on the death of said Dominga Fernandez y Verdés, the six and one half cuerdas above described passed to the possession of said José Laboy y Fernandez, and on his death to that of the defendant Josefa Diana Martinez, but that the right and title to the ownership of the funds belonging to the estate of said Silva and so loaned and secured by said mortgage, and the right and title to the land so ceded, as aforesaid, in payment of said mortgage, like that of the parcels of real estate hereinbefore described, has been legally vested in your orator since the death of the said José Apolinario Laboy.

Nineteenth. That on the 21st day of June, 1893, the said José Laboy y Fernandez, further pretending to act as heir by
18 substitution of said Juan Bautista Silva, made and executed a lease for five years to Gustavo Cabrera and the Sucesión of Enrique Cabrera, co-owners of the hacienda "Bocachica," to a tract of land described as follows, to wit:

One and one half cuerdas situated in the barrio of "Capitanejo," municipal jurisdiction of Juana Diaz, bounded on the east, north and west with lands of the Succesión of Don Fernando Labastide, and on the south with the public road.

That before said lease expired, said José Laboy y Fernandez extended same for another five years, and thereafter and before said lease so extended had expired, he further extended the same by a document dated the 31st of December 1900, for another five years, so that said lease should expire on the 23rd of June, 1908, and that the yearly rental stipulated therein was ten dollars and eighty cents ($10.80).

Your orator shows that although said lease and its extensions were so far below a just and reasonable rental as to constitute said contract an unreasonable and fraudulent one; and that by virtue of the contents of said last will and testament of Juan Apolinario Laboy and its reference to the terms of said last will and testament of said Silva, the lessees of said one and one half cuerdas were charged with notice of the want of title in said José Laboy y Fernandez and his illegal possession and control of same at the time said lease was made, by reason whereof said lease is wholly null and void and the said lessees should, therefore, be liable to account to your orator for the reasonable rental of said tract from the date of their first entry into possession thereof; yet, in order to expedite this cause and avoid making

said lessees, to wit, Gustavo Cabrera and the Sucesión Cabrera,
19 composed of Gustavo Cabrera, Mrs. María Cabrera de Lacot and Enrique Cabrera Vestía, parties defendant to this cause, and to avoid the lapse of time necessary to obtain service on them, as the said Gustavo Cabrera and Mrs. María Cabrera de Lacot are absent from this jurisdiction and in Europe, and Enrique Cabrera, who is a minor, is also absent from the jurisdiction, being in the United States, your orator expressly renounces all claim to an accounting by said lessees of any sum which might be considered as a reasonable and just rent for said tract from the time they entered into the use thereof, and your orator will expressly desist from praying the Court that said les-ee be declared null and void and of no effect, but instead will ask for the relief hereinafter prayed.

Your orator, therefore, alleges that the possession and control of the property and estate of the said Juan Bautista Silva, as hereinbefore set forth, by the defendant Josefa Diana y Martinez is wrongful and illegal; that both the title to said estate and the right of possession thereof now is and has been since the death of said Dominga Fernandez y Verdés vested in your orator; that all the acts and doings of said José Laboy Fernandez and Josefa Diana Martinez touching said property have been unwarranted, illegal, and void, and that the various leases made by them, with the exception hereinafter mentioned, and the possessory title to said properties fraudulently obtained by said defendant Josefa Diana Martinez, should be declared null and void and ordered cancelled upon the registry of property by the order of this honorable Court. Your orator
20 alleges that the value of the aforesaid estate is more than Ten Thousand Dollars. Forasmuch, therefore, as your orator is without remedy in the premises except in this Court of Equity, and to the end that the defendants may, if they can, show why your orator, is not entitled to the relief herein prayed, and may, upon their respective corporal oaths, and to the best of their knowledge, remembrance, information and belief, full, true and perfect answer make to this Bill, your orator now prays the Court that your orator may be decreed to be the owner of the full title and dominion to the several tracts or parcels of real estate and the mortgages hereinbefore described, and entitled to the possession and control thereof in accordance with the terms of said last will and testament of the said Juan Bautista Silva; that the failure of the said Dominga Fernandez Verdés to name by last will and testament a successor to herself for the performance of the duties in respect to said properties provided for and made indispensable by the provisions of said last will and testament, may be declared a violation of the provisions thereof and that by such want of compliance with and violation of the terms of said will, the third condition thereof hereinbefore quoted may be declared to have become effective, and thereby the title and right of possession to the said estate of said Juan Bautista Silva to have become vested in your orator by virtue of said alternative provision of said will and ordered to be recorded by the Register of Property; that the possession of said estate by the said José Laboy y Fernandez and Josefa Diana Martinez after the death of said Dominga Fernandez

Verdés, may be decreed to be wrongful and illegal and all
21 their acts and doings in the control and disposition of said estate, illegal and void, and said defendant, Josefa Diana Martinez, decreed to turn over and deliver up the possession and control of all and singular the property of said estate to your orator; that the instrument of lease executed between said José Laboy y Fernandez and the defendant Carlos Cabrera on the 6th day of February, 1901, and all other leases or other documents whereby the said defendant Carlos Cabrera pretends or claims to have any ownership or right of possession in the said tract of land of one hundred and twenty six cuedras described under letter "B" of the third paragraph of this Bill, may be decreed to be null and void and ordered cancelled upon the registry of property, and said defendant Carlos Cabrera decreed to pay to your orator a reasonable rental for the use of said land for all the time he has been in possession of the same, and return the possession thereof over to your orator; that the instrument of lease executed between said José Laboy y Fernandez and the defendant, Tomás Torres, on the 16th day of February 1901, and all other leases or other documents or contracts whereby the said defendant Tomás Torres pretends or claims to have any ownership or right of possession in the said tract of land of fi-ty and one half cuerdas described under letter "C" of the Third paragraph of this Bill, may be decreed to be null and void and ordered cancelled upon the registry of property, and said defendant To*áms* Torres decreed to pay to your orator a reasonable rental for the use of said land for all the time he has been in possession of the same, and to deliver over the possession of the same to your orator; that the instrument of lease executed between the defendant Josefa Diana Mar-
22 tinez and the defendant Julio N. Chardón on the 9th day of January 1904, and all other leases or documents or contracts whereby the said Julio N. Chardón pretends or claims to have any ownership or right of possession in the said tract of four hundred cuerdas and one hundred and twenty six cuerdas, described under letters "A" and "B," of the T*j*ird paragraph of this Bill, and the sublease made of said tract of one hundred and twenty six cuerdas by the said defendant, Julio N. Chardón to the said defendant Carlos Cabrera, on the 20th day of January 1904, may be decreed to be null and void and ordered cancelled upon the registry of property, and said defendant Julio N. Chardón decreed to pay to your orator a reasonable rental for the use of said tract of four hundred acres for all the time he has been in possession of the same, and to deliver over the possession of same to your orator; that the "titulo posesorio" obtained by the defendant Josefa Diana Martinez by decree of the District Court of Porto Rico for the district of Ponce, may be declared to be fraudulent and void and ordered to be cancelled upon the registry of property, and said defendant Josefa Diana Martinez be decreed to be without any right, title or interest of any kind in and to any of the property of said estate of said Juan Bautista Silva; that the mortgage for six hundred pesos upon the real estate described in paragraph Seventeenth of this Bill may be decreed to be the property of your orator as the heir of said Juan Bautisto Silva,

and that the register of property may be ordered to inscribe the right and title thereto in the name of your orator; that the real estate described in the Eighteenth paragraph of this Bill, and which
23 was ceded in payment of the mortgage therein described, may be decreed to be the property of your orator as the heir of said Juan Bautista Silva, and that the said Josefa Diana Martinez may be decreed to deliver over the possession of the same to your orator, and the Register of Property may be ordered to inscribe the right and title thereto in the name of your orator, and that said defendant Josefa Diana Martinez be decreed to render an accounting and pay to your orator whatever profits in the way of interest, rents or use may have accrued on said tract from the date of the last payment of interest on said mortgage to your orator on the — day of ——; that the said real estate described in paragraph Nineteenth of this Bill may be decreed to be the property of your orator as the heir of said Juan Bautista Silva and the Register of Property ordered to register the right and title thereto in the name of your orator, but that the lessees thereof be allowed to remain undisturbed in the occupation and use thereof during the term of their lease, which expires on the 23 day of June, 1908, and that the defendant Josefa Diana Martinez be expressly declared to be the trustee of your orator for the collection of the rents of said lease and ordered to turn the same over to your orator for its use and benefit; and that your orator may have such other and further relief as equity may require and to Your Honor may seem meet.

And may it please your Honor to grant unto your orator a writ of subpœna, issuing out of and under the seal of this honorable Court, to be directed to the said Josefa Diana Martinez, Julio N.
24 Chardón, Carlos Cabrera and Tomás Torres, defendants, commanding them and each of them on a certain day and under certain penalty in the said writ to be inserted, personally to be and appear before your Honor in this honorable Court and then and there full, true and perfect answer make to all and singular the premises, and further to stand, perform and abide such further orders, direction and decree therein as to your honor shall seem meet and shall be agreeable to equity and good conscience, and your orator will ever pray.

ANGEL ACOSTA QUINTERO,
PETTINGILL & LEAKE,
Solicitors for Complainant.

25 EXHIBIT A. Filed with Bill.

Testamento.

En el nombre de Dois Amen.

Sepan todos los que este mi testamento vieren como yo Juan Baustista Silva, natural del partido de Ponce y vecino hoy de Santa Isabel en la Isla de Puerto Rico, de estado soltero, de como cincuenta y ocho años de edad jijo legitimo de Don Antonio y de

Doña Petrona Lugo difuntos halladome enfermo y en cama de la que Dios Nuestro Señor se ha servido mandarme, pero esto no obstante en mi completo juicio memoria y entendimiento natural, creyendo como siempre he creido y confesado, el Misterio de la Trinidad y demas sacramentos que tiene y confiesa nuestra Santa Madre Iglesia Catolica Apostolica Romana bajo cuya fé y creencia siempre he vivido y protesto continuar hasta la muerte; que temeoroso de ella, para cuando me sea llegada la hora no me encuentre desprevenido de disposción testamentaria, otorgo este mi testamento á honra y gloria de Dios y su Madre Santísima Maria Señora Nuestra á quien invoco como intercesora y abogada y lo verifico del modo siguiente.

Primeramente encomiendo mi alma á Dios y el cuerpo lo mando á la tierra de que ha sido formado, sepultandose en el cementerio del lugar donde suceda mi fallecimiento y recomendando á mi albacea, el que mis restos, si no puede ser el día de mi enterro, en el momento en que sea posible se depositen en un panteon que se compre ó construya al efecto al gusto y volutad de dicho Albacea, haciendoseme un entierro llano cantado con las tres misas de alma de á peso cada una, y repartiendose la suma de cien pesos entre veinte y cinco pobres del partido de Ponce que lo merezcan á juicio del mismo Caberalero que se auxiliará al efecto de la autoridad local para que se llene mejor el objeto, haciendose el repartimiento á todos en un día dado.

26 Item. Lego medio real á cada cual de las mandas forzozas y á la pía religiosa las tres pesos de orden con cuya limosna los separo de todo derecho y acción á mis bienes.

Item. Declaro que nunca he sido casado y no tengo tampoco hijos naturales de ninguna especie por consiguiente carezco absolutamente de herederos forzozos y lo que hoy poseo lo he adquirido palmo á palmo, en fuerza de mis economias y de mi constancia al trabajo desde mi más tierna edad como es de pública notoriedad.

Item. Declaro igualmente como bienes que me pertenecen adquiridos legitimamente y de los cuales estoy en tranquila posesión, los siguientes,

Esta estancia de crianza que radica en este barrio de La Boca partido de Santa Isabel, que con el nombre de Mejias y con una área de Dos Cientas Diez y Ocho y Media Cuerdas compré de Don Federico Capó y de su esposa por escritura ante el presente Escribano el veinte y seis de Agosto de mil ochocientos, sesenta y cuatro; Despues de aquella fecha la he aumentado con compras parcilales que he hecho según documentos que se me han otorgado, de modo que hoy tengo en un solo cuerpo en este lugar unas Cuatrocientas Cicuenta Cuerdas de que se compone dicha estancia con la casa de vivienda alta y baja de medera cubierta de tejamanil en mal estado con su cocina; otra casita de madera de palma y paja recien construida cerca de la salida al camino real en terrenos comprendidos en dicha área, que le compré en este mismo año pasado á Don Ramón Torres, paso para bebedero de los animales y otros objetos conocidos como de la propiedad referida que colinda con el río de coamo, con el referido Don Ramón Torres y otros vecinos.

Tengo ademas en este mismo barrio en otro cuerpo en el lugar

del Convento otra área de terreno de como Ciento Veinte
27 y Seis Cuerdas tambien de pastos y malezas comprades á diversos según documentos, de las que seis y media cuerdas compré á la Viuda de Don Manuel Cayteano que no me ha pasado aún escritura para entregarle catorce pesos que le adeudo;

Cincuenta y Media Cuerdas más que me pertenecen en este mismo Partido y lugar nombrado del Coto y Dos Cuerdas Tres Cuadros en el Barrio de Machuelo Abajo Partido de Ponce que le compré á Ramón Santiago.

Tengo varias cabezas de ganado chicas y grandes machos y hembras de que conservo inventario entre mis papeles que conoce perfectamente mi Albacea, así como algún animal caballuno;

Y en efectivo tengo Dos Mil y Pico de Pesos, puesto que de ello estoy gastando para mi enfermedad.

Ademas me está adeudando Don Fermín Astebea de Salinas Mil Pesos Don Domingo Rios de Ponce cuatrocientos cuarenta y cinco pesos; Dos Cientos Cincuenta Pesos Don José Moreo que me tomó prestados por cortos días y alguna que otra deuda á favor insignificante que consta de mis papeles;

Y no debo cantidad alguna á persona mas que las Catorce Pesos de la Viuda Cayetano.

Item. Quiero y es mi voluntad legar como lego á Maria Juliana y Ramona Isabel libertas hijas de Carmen que fué mi esclava, la primera de ellas casada con Roque Colón y la otra soltera que viven en este mismo lugar; Cincuenta Cuerdas de Terreno para las dos, ó sean veinte y cinco cuerdas á cada una; cuya área se le señalará frente al Camino Real de Santa Isabel tomando para ello las veinte y tantas cuerdas que compré últimamente á Don Ramón Torres y lo demás se tomará á continuación de aquellas del terreno de esta estancia donde menos perjuicios sufran los cercados de ésta legandole tambien la casita de tabla y paja que hice construir recien-
28 temente á la salida de dicho terreno de Torres, con la condición de que no puedan disponer del todo ni parte de dicho legado, hasta que no arriben á la mayor edad y muriendo alguna de ellas sin hijo que recaiga el legado en la que sobreviva coolegataria todo ello como prueba del cariño que les tengo porque nacieron en mi poder y las he visto crecer.

Item. Puesto que carezco de herederos forzozos y lo que poseo no quiero se desmembre porque me cuesta muchos años de trabajo y economías es mi voluntad deliberada que extraido que sea el legado antedicho para Maria Juliana y Ramona Isabel hijas de las liberta Carmen y dos vacas paridas una para cada cual de ellas asi como lo necesario para cubrir los gastos de mi enfermedad y entierro, todos mis demas bienes sobrantes que los constituyen terrenos, animales y deudas á favor que llevo mencionadas, tome posesión y entrega de ellos mi buen amigo don Juan Apolinario Laboy vecino de Ponce que merece toda mi confianza hace tiempo, me sirve y acompaña en mis enfermedades desinteresadamente, á quien nombro é instituyo por *mi único heredero voluntario de dichos bienes durante su vida* con las condiciones precisas que le impongo á continuación:

Primera. Que el líquido usufructo de dichos bienes, después de

satisfechas las contribuciones municipales y demás que por derecho se les impongan se divida en dos partes iguales, una para dicho heredero Laboy en recompensa justa de su buena administración y celo por dichos intereses y otra para atender á los pobres enfermos del Santo Asilo de Caridad de las Damas en Ponce, cuya liquidación de productos y entrega de esta parte se hará al fin de cada año por el mismo heredero-administrador, sin otra intervención extraña de ningún género, como cometido de pura conciencia y porque el producto de propriedas como las que dejo, dependen mas ó menos
29 de que sean ó nó favorables las estaciones del año y que no falten á tiempo las lluvias en la comerca.

Segunda. Que siendo mi especial objeto el que no se desmembren ni dividan mis bienes, que tantas privaciones y trabajos me cuestan, á la muerte de Laboy con el debido inventario y razón de ~~tobon~~ ellos al poder y posesión de la persona ques merezca la confianza del mismo don Juan Apolinario Laboy, con iguales facultades y para el propio objeto que llevo aquí consignado, á cuyo fin en el momento en que por mi muerte entre éste en la propiedad y posesión de mis citados bienes deberá precisamente otogar en forma su final disposición testamentaria, en que determine la persona que le haya de sucedar en dicho cometido, cuya facultad de sustituir que acuerdo con tal motivo á Laboy se irá transmitiendo de éste como dejo dicho en persona de su confianza, de aquel en la que merezca la suya, y así sucesivamente siempre por testamento en forma ú otro acto fehaciente que otorgará sucesivamente en el momento en que entren á desempeñar su cargo de heredero substituto, y

Tercera. Que si por no llenarse este requisitio de la sustitución en oportunidad como lo recomiendo, si por pretenciones de algún pariente mío ó extraño, ó por cualquier otro concepto, motivo ó reclamación se quisise hacer ó suponer vacante ó intestada la citada herencia ó sea las bienes que la contituyen, quiero y es mi voluntad que en este último caso, que á la muerte del referido Laboy mi primer heredero, pasen dichos bienes al citada Santo Asilo de Damas de Ponce, como mi heredero substituto que le nombro recomendando en este caso muy especialmente á esta asociación el que se conserve en lo posible bajo buena administración las predichos bienes y solamente sus productos liquidos sean los que se inviertan en el socorro de los pobres enfermos del establecimiento indicado.

30 Item. Nombro por mi albacea y fiel ejecutor testamentario de estat mi final disposición al predicho mi amigo Don Juan Apolinario Laboy con las más amplias facultades que en deracho se necesiten, libre, franca y general administración y completa relevación de fianza y toda garantía.

Finalmente, por el presente revoco, anulo y doy por de ningún valor ni efecto, todo otro testamento que antes de ahora haya hecho ú otrogado de palabra, ó en cualquiera otra forma, y solo quiero valga el presente que otorgo de mi expontánea voluntad ante el infrascrito Escribano Público de este Distrito Judicial Don Francisco Parra y testigos llamados y rogados al intento, que son presentes Don Angel Aguerrevere Licenciado en Medicina, Don José Moreo propietario y Don Juan José Vazquez propietario todos vecinos que

firman todos, haciéndolo el Sr. Aguerrevere á mis ruegos, pues aunque yo sé hacerlo el estado nervioso de la enfermedad no me lo permite en este momento estando en esta mi casa de morada Barrio de la Boca Partido de Santa Isabel á los diez y siete días del mes de Diciembre de mil ochocientos setenta y tres.

En este mismo acto y antes de cerrar este otorgamiento yo el testador aclaro, ordeno y mando que en el caso de venir á recaer la herencia en el Santa Asilo de Ponce, como lo preveo en la tercera condición de la cláusula sexta de éste mi testamento, si por cualquiera motivo no existese ó hubiese desaparecido el referido establecimiento de Caridad cuando llegue aquel caso, vendrá á suceder en dicha herencia con las mismas condiciones y facultades, el Insituto de Segunda Enseñanza de Ponce, y cuando éste no estuviese desgraciadamente planteado, recaerá la predicha herencia en la obra ó establecimiento más maritorio que lo necesite de la misma
31 villa de Ponce, pues que he nacido en dicho Partido y para éste son mis deseos; y nunca fuera de su jurisdiction bajo pretesto ni con motivo de ninguna especie.

Y yo dicho Escribano que presente estoy á este otorgamiento con los testigos y de él doy fé. También la doy de que el testador á quien conozco á pesar de su enfermedad se encuentra á mi parecer y el de los testigos en su completo juicio, memoria y entendimiento natural como lo observo de que certifico—

Como testigo y á ruego de Don Bautista Silva por no poderlo hacer,

A. AGUERREVERE,
Como Testigo, JOSÉ MOREO,
Como Testigo, JUAN JOSÉ VAZQUEZ,
(Signado) FRANCISCO PARRA,
Escribano Público.

Entry of Appearance.

August 13, 1905.

ASOCIACIÓN DE SEÑORAS DAMAS DEL SANTO ASILO DE PONCE,
Complainant,
vs.
JOSEFA DIANA Y MARTINEZ, JULIO N. CHARDÓN, CARLOS CABRERA, and TOMÁS TORRES, Defendants.

To the Clerk of said Court:

Please enter my appearance for the defendants Josefa Diana Martinez, Julio N. Chardón, Carlos Cabrera and Tomás Torres in above entitled action.

Ponce, August 13, 1905.

C. LOPEZ DE TORD,
Solicitor for Defendants.

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32 *Demurrer to Bill.*

(Filed September 4, 1905.)

ASOCIACIÓN DE SEÑORAS DAMAS DEL SANTO ASILO DE PONCE
vs.
JOSEFA DIANA MARTINEZ, JULIO N. CHARDÓN, CARLOS CABRERA, and TOMÁS TORRES.

To the Honorable Chas. MacKenna, Judge of the Court aforesaid, Sitting in Chancery.

The joint and several demurrer of Josefa Diana y Mertinez, Julio N. Chardón, Carlos Cabrera and Tomás Torres, the above named defendants, to the bill of complaint of Asociación de Señoras del Santo Asilo de Ponce, the above named plaintiff.

Now come the defendants Josefa Diana y Martinez, Julio N. Chardón, Carlos Cabrera and Tomás Torres, for the special purpose and no other, until the question herein raised is decided of objecting to the jurisdiction of this court, by protestation, not confessing or acknowledging all or any part of the matter *of* things in said bill of complaint contained to be true in such manner and form as the same are herein set forth and alleged, demur to the said bill and for cause of demurrer show:

First. That it appears from the said bill of complaint of
33 the plaintiff, that this court has no jurisdiction to hear and determine this action, all the parties in said bill named being citizens of Porto Rico.

Second. That the said plaintiff has not in and by the said bill of complaint made or stated any such cause as does or ought to entitle him to any such relief as is thereby sought and prayed from or against these defendants.

Third. That the Plaintiff's remedy is barred by length of time, and his right is barred by the statute of limitations.

Wherefore these defendants demand the judgment of this honorable court whether they shall be compelled to make any further or other answer to the said bill, or any of the matters and things therein contained, and pray to be hence dismissed, with their reasonable costs in this behalf sustained.

C. LOPEZ DE TORD,
Solicitor for Defendants.

DISTRICT OF PORTO RICO, *ss:*

Josefa Diana y Martinez makes solemn oath and says that she is the above defendant, and that the foregoing demurrer is not interposed for delay.

JOSEFA A. DIANA V. DE LABOY.

Subscribed and sworn to before me this fourth day of September of 1905.

[NOTARIAL SEAL.] CARLOS J. CHARDÓN,
Notary Public of the City of Ponce.

34 I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

C. LOPEZ DE TORD,
Of Counsel for Defendants.

Setting Down Demurrer for Argument.

(Filed October 2, 1905.)

ASOCIACIÓN DE SEÑORAS DAMAS DEL SANTO ASILO DE PONCE
vs.
JOSEFA DIANA Y MARTINEZ, JULIO N. CHARDÓN, CARLOS CABRERA, and TOMÁS TORRES.

Equity.

Now come the complainants herein, by their solicitors, Pettingill & Leake, and move the Court to set down for argument on November Rule Day at the chambers of the Judge at San Juan, the demurrer filed herein by the defendants to the bill of complaint on September 4th, 1905

PETTINGILL & LEAKE,
Solicitors for Complainants.

October 2nd, 1905.

35 *Order Overruling Demurrer, Entered November 20, 1905.*

ASOCIACIÓN DE SEÑORAS DAMAS DEL SANTO ASILO DE PONCE
vs.
JOSEFA DIANA Y MARTINEZ ET AL.

Order.

The Court, upon consideration of the bill herein and the demurrer thereto, is of the opinion that all the allegations of said bill disclosing trusts, construction of wills, accounts and other matters are peculiarly subjects of equity and that no adequate remedy at law is afforded complainants.

The first and third grounds of demurrer were so obviously frivolous that they were abandoned by Counsel for the defendants at the argument, and the second ground alleging that the complainants herein have an adequate remedy at law is so unfounded and frivolous that it could only have been interposed for delay.

Wherefore, in overruling the said demurrer, the Court feels con-

strained to enforce the rule as to costs, and orders the costs of this proceeding thus far to be paid by the defendants.

CHAS. F. McKENNA, *Judge.*

36 *Plea.*

(Filed Dec. 26, 1905.)

ASOCIACIÓN DE SEÑORAS DAMAS DEL SANTO ASILO DE PONCE
versus
JOSEFA DIANA Y MARTINEZ, JULIO N. CHARDÓN, CARLOS CABRERA, and TOMÁS TORRES.

The joint and several plea of the defendants Josefa Diana Martinez, Julio N. Chardón, Carlos Cabrera, and Tomás Torres, to the bill of complaint of Asociación de Señoras del Santo Asilo de Ponce.

These defendants, by protestation, not confessing or acknowledging all or any part of the matters or things in the said bill mentioned to be true in such manner and form as the same are therein set forth and alleged, do plead thereto, and for plea say:

That Dominga Fernandez Verdés did not die intestate as alleged in the bill of complaint, because said Dominga Fernandez Verdés had made and executed a will or testament before the notary public don Francisco Parra under date April 24, 1869, naming as her universal heir, and leaving all her property, to her adopted son José Laboy Fernandez, said will or testament having never been revoked; and she, said Dominga Fernandez Verdés, being the second substituted heir of the estate left by Juan Bautista Silva, the substitution instituted by Juan Bautista Silva in his last will had no fur-
37 ther effect according to the law, and therefore the estate of said Juan Bautista Silva did pass, at the death of Dominga Fernandez Verdés, to her adopted son José Laboy Fernandez, her universal heir as aforesaid, and he acquired the legal title over said estate subject to the trust obligation, in accordance with the terms of the will of said Juan Bautista Silva, to deliver to the Santo Asilo de Caridad de las Damas de Ponce for the benefit of the sick poor of said Santo Asilo, the half of the net income of the estate of said Silva. Therefore these defendants demand the judgment of this honorable Court, whether they shall be compelled to answer the said plaintiff's bill of complaint, and humbly pray to be dismissed with their reasonable costs in this behalf sustained.

C. LOPEZ DE TORD,
Solicitor for Defendants.

I hereby certify that in my opinion the aforesaid plea is well founded in point of law.

C. LOPEZ DE TORD,
Of Counsel for Defendants.

UNITED STATES OF AMERICA, *District of Porto Rico, ss:*

Personally appeared Josefa Diana Martinez before me, and upon being by me duly sworn, deposes and says:

That she is one of the defendants for whom this plea is interposed; that she has personal knowledge of all the facts set forth in said plea; that the foregoing plea is true in point of fact and is not interposed for delay.

JOSEFA A. DIANA VIUDA DE LABOY.

38 Sworn to and subscribed in Ponce and before me this 26th day of December, 1905.

[NOTARIAL SEAL.] CARLOS F. CHARDON,
Notary Public.

Setting Down Plea for Argument.

(Filed Dec. 29, 1905.)

ASOCIACIÓN DE SEÑORAS DAMAS DEL SANTO ASILO DE PONCE
versus
JOSEFA DIANA MARTINEZ ET AL.

Now comes the complainant herein, by its solicitors, and sets the plea filed herein by the defendants for argument on the 8th day of January, 1906, at ten o'clock A. M., or as soon thereafter on that day as counsel can be heard.

PETTINGILL & LEAKE,
Solicitors for Complainant.

Journal Entry, July 17, 1906.

ASOCIACIÓN DE SEÑORAS DAMAS DEL SANTO ASILO DE PONCE
vs.
JOSEFA DIANA MARTINEZ ET AL.

Plea herein is overruled *pro forma* and defendants given until August 10 to answer.

39 *Answer.*

(Filed August 10, 1906.)

ASOCIACIÓN DE SEÑORAS DAMAS DEL SANTO ASILO DE PONCE
vs.
JOSEFA DIANA MARTINEZ, JULIO N. CHARDÓN, CARLOS CABRERA, and TOMÁS TORRES.

To the Honorable B. S. Rodey, Judge of the Court aforesaid sitting in Chancery:

The Joint and Several Answers of Josefa Diana Martinez, Julio N. Chardón, Carlos Cabrera, and Tomás Torres, the Defendants.

These defendants respectively, now and at all times hereafter saving to themselves all and all manner of benefit or exception or otherwise that can or may be had or taken to the many errors, uncertainties or imperfections in the said bill contained, for answer thereto, or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, severally answering say:

That they believe it to be true that Juan Bautista Silva, deceased, the testator named in the bill of complaint being possessed of a large personal estate and of the real estate described in said bill of complaint did, at or about the time mentioned by complainant, make and execute his last will and testament, of such purport and
40 effect, containing all the clauses and conditions in said bill set forth.

And these defendant- further answering say that it is true and therefore they admit that the testator Juan Bautista Silva died on or about the 15th day of May, 1875, without having revoked his said will or testament, that the heir appointed by him, that is to say José Apolinario Laboy took possession of all the property left by said Juan Bautista Silva and that said Laboy continued to administer said property in accordance to the terms of the will.

These defendants further answering say that it is true that they admit that José Apolinario Laboy, complying with the provisions of the will or testament of said Silva, named as the heir of said Silva in substitution of himself, his wife Dominga Fernandez Verdés or in case that she died before said Apolinario Laboy, he named in her stead his foster son José Laboy.

Defendants continue to answer and say that it is true and therefore they admit that at the death of said Juan Apolinario Laboy, his widow Dominga Fernandez Verdés toook possession of the property left by said Silva and administered said property up to her death that took place on or about the 15th day of January, 1891; that said Dominga Fernandez Verdés did not appoint a person to succeed her as her heir in substitution of herself in accordance with

the provisions of the testament of Silva; but these defendants deny that said Dominga Fernandez Verdés had died without having made or executed any will or testament as it is alleged *on* the six- paragraph of the bill of complaint; but on the contrary these
41 defendants allege that said Dominga Fernandez Verdés made and executed on the 24th day of April, 1869, and before the Notary Public of Ponce Don Francisco Parra her last will or testament naming as her universal he-r her foster son José Laboy Fernandez, a true and correct copy of said will is herewith filed marked "exhibit A;" and these defendants further allege that said Dominga Fernandez Verdes died without having modified or in any way revoked her said last will or testament.

These defendants further answering claim that at the death of Dominga Fernandez Verdes, her foster son José Laboy Fernandez became entitled to all the property left by said Dominga Fernandez Verdés as her universal heir appointed by her in her last will or testament, as heretofore alleged; and consequently said José Laboy Fernandez became also entitled to the estate of Juan Bautista Silva, said estate affected by a right of *usufructus* or trust obligation in favor of Santo Asilo de Damas, whereby said Santo Asilo de Damas was entitled to the half net income of the property left by said Silva. And these defendants claim that by the failure of Dominga Fernandez Verdés to appoint a successor in the management of the estate of Juan Bautista Silva, the condition in the will of said Silva whereby a successor ought to be successively named, was not violated, as it is alleged in the paragraph seventh of the bill of complaint, such condition being originally null and void, in accordance with the laws existing at the time that said will of Silva was made and executed existing also at the time of the death of said Silva, said laws forbidding perpetuities of any kind.

And these defendants further claim that said José Apoli-
42 nario Laboy, the heir appointed by said Juan Bautista Silva in his last will or testament as heretofore alleged entered into the possession of the property left by said Silva with the right and power to dispose of the same by any act *inter vivos* or *mortis causa*, the right of *usufructus* in favor of Santo Asilo de Damas being fully protected by its attachment to the land.

Defendants further claim that at the death of Dominga Fernandez Verdes the third clause or condition of said will of Silva, whereby it was provided that in the failure of said José Apolinario Laboy to appoint his successor, the whole estate of said Silva should go to Santo Asilo de Damas, did not become operative and effective, as it is alleged *on* the seventh paragraph of the bill of complaint, such third clause or condition being only operative, in accordance with its wording and meaning, if certain events had taken place at the death of said Apolinario Laboy.

And these defendants claim that at the death of said Dominga Fernandez Verdes, Santo Asilo de Damas did not become entitled to the possession, control and full dominion of the estate of said Silva as complainant allege-, but such possession control and full dominion, affected by the right of *usufructus* of Santo Asilo de Damas, did pass

to the universal heir of said Dominga Fernandez Verdés, that is to say, to said José Laboy Fernandez.

These defendants further allege that at the death of Dominga Fernandez Verdes said José Laboy Fernandez acting as her universal heir took possession and control of the estate of Silva. And
43 these defendants specially deny that in so doing said Laboy Fernandez did act wrongfully and fraudulently, as it is set forth in the bill of complaint, but on the contrary they allege that he acted in good faith and conscience and well believing that he was entitled to said possession and control.

And these defendants further claim that Santo Asilo de Damas accepted and consented to the control and possession of the estate of Silva by said José Laboy y Fernandez, allowing him to administer said estate, approving the accounts of said administration, and accepting and receiving the balance due to Santo Asilo de Damas, that is to say, the half net income of said estate. And these defendants claim that Santo Asilo de Damas is estopped from denying the right of possession and control of the estate of said Silva by said José Laboy Fernandez.

These defendants further allege that at the death of José Laboy Fernandez, his wife the defendant Josefa Diana Martinez acting as his heir, entered into the possession and control of the estate of said Silva, administering the same in good faith and with the knowledge and consent of Santo Asilo de Damas, rendering accounts and delivering to said Santo Asilo de Damas the half net income of said estate. And these defendants specially deny that said Josefa Diana Martinez had ever refused to recognize the rights of complainants in said estate of Silva, but allege that she has always been ready and still is ready to deliver to Santo Asilo de Damas as he did deliver the half net income of the estate of Silva.

And these defendants further allege that Josefa Diana
44 Martinez being the legal owner of the estate of Silva and as such entitled to the possession of said estate, did obtain by judicial process a possessory title to said estate of Silva; and these defendants deny that in so doing she acted fraudulently as it is alleged in the bill of complaint, but it is true that she acted in good faith and conscience, recognizing the rights of Santo Asilo de Damas, and continuing to deliver to the same the half net income of said estate.

These defendants further allege that it is true and therefore they admit that José Laboy Fernandez made and executed a lease to one Domingo Gonzalez Díaz of the tract of land described in the bill of complaint under letter "B," for the term and under the other condition, alleged by complainants; that after different transactions, said lease became the property of Don Carlos Cabrera y Paz; that said Carlos Cabrera obtained from said José Laboy Fernandez a further extension of the term of the lease, but these defendants claim that the rent agreed upon was a reasonable one at the time that the contract was entered into, and taking into account the condition of the land that required great expenses for the appropriation of sugar cane cultivation; and these defendants claim that they did not have notice

of the fact that said José Laboy Fernandez had no power to make and execute leases, but on the contrary they believed and they continue to believe that said José Laboy Fernandez was the legal owner of said land; and these defendants further claim that Santo Asilo de Damas did not object to said lease but on the contrary accepted all the conditions of the same, and said Santo Asilo de Damas
45 collected from said lesse- Domingo Gonzalez Diaz and later from Don Carlos Cabrera y Paz one half of the rent of said lease, and allowed and consented that the other half of said rent *were* delivered to José Laboy Fernandez and after his death to the defendant Josefa Diana Martinez.

And these defendants claim that complainant is estopped from denying the fairness and validity of said lease to said Carlos Cabrera y Paz and that Santo Asilo de Damas by its acts and doings induced said Carlos Cabrera y Paz to make heavy expenses for the amelioration of the land.

Defendants further allege that it is true and therefore they *allege that it is true and therefore they* admit that said José Laboy Fernandez made and executed a lease to defendant Tomás Torres of the tract of land of fifty one and a half cuerdas described in the bill of complaint under letter (C), for the term and under the other conditions set forth in the bill of complaint; but these defendants claim that the rent agreed upon was a reasonable one at the time that the contract was entered into and taking into account the condition of the land that required great expenses to appropriate the same to cane cultivation; and these defendants claim that they did not have notice of the fact that said José Laboy Fernandez had no power to make and execute leases, but on the contrary they believed and they continue to believe that said José Laboy Fernandez was the legal owner of said land; and these defendants claim that Santo Asilo de Damas did not object to said lease but on the contrary accepted all the conditions of the same, and said Santo Asilo de Damas has collected from said lessee Tomás Torres one half of the rent of said lease, and al-
46 lowed and consented that the other half of said rent *were* delivered to José Laboy Fernandez and after his death to defendant Josefa Diana Martinez; and these defendants further claim that complainant is estopped from denying the fairness and validity of said lease to said Tomás Torres, and that Santo Asilo de Damas by its acts and doings induced said Tomás Torres to make heavy expenses for the amelioration of the land.

And these defendants further allege that it is true and therefore they admit that said José Laboy Fernandez made and executed a lease to defendant Julio N. Chardón of the tract of land referred to in the paragraph nine of the bill of complaint for the term and under the other conditions set forth in the bill; but these defendants claim that the rent agreed upon was a reasonable one at the time the contract was entered into and taking into account the condition of the land that required great expenses to appropriate the same to cane cultivation; and these defendants claim that they did not have notice of the fact that said José Laboy Fernandez had no power to make and execute leases but on the contrary they believed and they con-

tinue to believe that said José Laboy Fernandez was the legal owner of said land; and these defendants claim that Santo Asilo de Damas did not object to said lease but on the contrary accepted all the conditions of the same, and said Santo Asilo de Damas has collected from said lessee Julio N. Chardón one half of the rent of said lease, and allowed and consented that the other half of said rent *were* delivered to José Laboy Fernandez and after his death to de-
47 fendant Josefa Diana Martinez; and these defendants further claim that complainant is estopped from denying the fairness and validity of said lease to Julio N. Chardón, and that Santo Asilo de Damas by its acts and doings induced said Julio N. Chardón to make heavy expenses for the amelioration of the land; and these defendants further allege that on the 27th day of January, 1905 and therefore after the bill of complaint was filed, Santo Asilo de Damas, duly represented by its attorney Joaquín Ferrán y Lluis entered into an agreement with defendant Julio N. Chardón whereby it was estipulated that in case that Santo Asilo de Damas should win the present suit in equity, said Asilo de Damas shall be bound to make and execute a lease in favor of said Julio N. Chardon of the same tract of land demised to him by José Laboy Fernandez as heretofore alleged, and it was further estipulated that during the pendency of this suit said Julio N. Chardón would enjoy the benefit of the lease granted to him by said José Laboy Fernandez, and furthermore said Joaquín Ferran y Lluis acting as said attorney for Santo Asilo de Damas, in consideration of said agreement bound himself to cause the solicitor for Santo Asilo de Damas to make a motion to the Honorable Court in order to have the case dismissed against said Julio N. Chardon.

Defendants continue to allege that it is true and therefore they admit that said Julio N. Chardón made and executed a sub-lease of the tract of land of one hundred and twenty six cuerdas described in the bill of complaint under the letter (B) for the term and under the conditions set forth in the bill of complaint; but these defendants claim that the rent agreed upon was a reasonable one at the
48 time the contract was entered into, and that Santo Asilo de Demas did not object to said sub-lease but on the contrary accepted the same, recognizing said Carlos Cabrera as such sub-lessee, and Santo Asilo de Damas by its acts and doings induced said Carlos Cabrera to make heavy expenses for the amelioration of the land.

These defendants further answering say that it is true and therefore they admit that defendant Josefa Diana Martinez presented to the District Court of Ponce her petition for a "título posesorio" for the two tracts of land referred to in paragraph fifteen of the bill of complaint; but these defendants claim that said Josefa Diana Martinez in so doing did not act fraudulently and in bad faith as it is alleged by complainant but on the contrary she made her petition for a "tituio posessorio" believing as she continues to believe that she is entitled to the possession of said two tracts of land; and that said Josefa Diana Martinez after making said petition continue- to recognize the rights of Santo Asilo de Damas delivering to the same one half of the net income of said two tracts of land.

And these defendants, continue to answer and allege that it is true and therefore they admit that said Josefa Diana Martinez presented to the District Court of Ponce her petition to have decreed in her favor the dominion title to the two tracts of land referred to in the precedent paragraph, that Santo Asilo de Damas entered its opposition to said petition; but these defendants deny that said court had ever entered any decree denying that said Josefa Diana Martinez *were* not entitled to have a dominion title, the decree of
49 the court being to the effect of denying only the right to have a question of title decided in an *ex parte* proceeding as was the one established by said Josefa Diana Martinez before the said Court of Ponce.

These defendants further answering say that they admit that one Federico Pascual made and executed a mortgage in favor of the estate of Juan Bautista Silva for six hundred pesos provinciales upon the tract of land described in the seventeenth paragraph of the bill of complaint; but these defendants deny that the title and ownership of said mortgage has been legally vested in complainant since the death of said Juan Apolinario Laboy, as it is alleged in the bill, and they claim that the title and ownership of said mortgage belongs to the defendant Josefa Diana Martinez, the Santo Asilo de Damas being only entitled to one half of the interest produced by said mortgage in accordance with the terms of the will of Juan Bautista Silva.

These defendants further allege that it is true and therefore they admit that on the date alleged in the bill of complaint José Laboy Fernandez executed a mortgage for one thousand one hundred and fifty pesos, current money, on the property described in the eighteenth paragraph of the bill of complaint, that the property mortgaged was transferred by the mortgagor to the mortgagee in payment of the debt, that at the death of Dominga Fernandez Verdés said property passed to the possession of said Laboy Fernandez and on his death to that of defendant Josefa Diana Martinez, that said property belongs to the estate of Silva because it was acquired with moneys of said estate; but these defendants deny that the
50 legal title of said property had been vested in complainant since the death of Dominga Fernandez Verdés, and claim that defendant Josefa Diana Martinez is the sole owner of said property, the Santo Asilo de Damas being only entitled to one half of the net income produced by the same.

And these defendants further answering allege that complainant is a Corporation organized and existing under the laws of Porto Rico, and all the defendants are citizens of Porto Rico.

And these defendants submit to the judgment of this honorable Court and humbly insist that this suit is altogether unnecessary and vexatious, and that complainant, even if *he* had been entitled to the relief asked for, the same might have been obtained by proceedings at law.

These defendants finally allege in addition to the foregoing answer that even in the case that complainant had been vested with the legal title of all the property described in the bill of complaint, since the

death of Dominga Fernandez Verdés as it is claimed in said bill, the cause of the action is barred by the Statute of limitation, defendant Josefa Diana Martinez and her predecessor in title having been in possession of said property during more than ten years before complainant's bill was filed, without any interruption, with good faith and a just title (justo título), inter presentes (entre presentes); and these defendants pray that they may have the same benefit from this allegation as if they had formerly pleaded the same.

Wherefore these defendants having fully answered, confessed, traversed and avoided or denied all the matter in said bill of
51 complaint material to be answered, according to their best knowledge and belief, humbly pray this Honorable Court to enter its judgment that these defendants be respectively *be* hence dismissed, with their reasonable costs and charges in this behalf wrongfully sustained.

C. LOPEZ DE TORD,
Solicitor for Defendants.

PORTO RICO, *District of Ponce, ss:*

Josefa Diana Martinez makes solemn oath and says; I am the above named defendant. So much of the foregoing answer as concerns my own acts and deeds is true to the best of my own knowledge; and so much thereof as concerns the acts and deeds of any other person or persons I believe to be true.

JOSEFA A. DIANA VIUDA DE LABOY.

Sworn to before me this tenth day of August, 1906.

GUSTAVO RODRIGUEZ,
[NOTARIAL SEAL.] *Notary Public, District of Ponce.*

52 *Replication to Answer.*

(Filed November 30, 1906.)

In the United States District Court for Porto Rico.

ASOCIACIÓN DE SEÑORAS DAMAS DEL SANTO ASILO DE PONCE
vs.
JOSEFA DIANA MARTINEZ ET AL.

This replicant, the Asociación de Señoras Damas del Santo Asilo de Ponce, saving and reserving to itself all and all manner of advantage of exception which may be had or taken to the manifold errors, uncertainties and insufficiencies of the answer of the defendants, Josefa Diana Martinez, Julio N. Chardón, Carlos Cabrera and Tomás Torres, for replication thereunto saith that it doth and will aver, maintain and prove its said bill to be true, certain and sufficient in law to be answered unto by the said defendants, and that the answer of the said defendants is very uncertain, evasive and insuffi-

cient in law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove as this honorable Court shall direct and humbly prays as in and by its said bill it has already prayed.

PETTINGILL & LEAKE,
Solicitors for Complainant.

November 30, 1906.

53 *Order Book Entry, January* 12, 1907.

ASOCIACIÓN DE SEÑORAS DAMAS DEL SANTO ASILO DE PONCE
vs.
JOSEFA DIANA MARTINEZ ET AL.

This cause is heard by the Court without the intervention of an Examiner or Master by consent of counsel, oral and documentary testimony are submitted by the parties, argument of counsel heard and the cause submitted. Parties given until the 18th instant to file briefs.

Journal Entry, February 8, 1907.

ASOCIACIÓN DE SEÑORAS DAMAS DEL SANTO ASILO DE PONCE
vs.
JOSEFA DIANA Y MARTINEZ ET AL.

The Court hands down an opinion and findings deciding the issue herein in favor of the complainant, and in accordance therewith the solicitors for the complainant are directed to prepare and submit to the Court a draft of final decree and such orders as may be necessary in the premises.

54 *Opinion.*

(Filed February 8, 1907.)

No. 198. Tried at Ponce.

ASOCIACIÓN DE SEÑORAS DAMAS DEL SANTO ASILO DE PONCE
vs.
JOSEFA DIANA Y MARTINEZ ET AL.

This cause was tried before the Court by consent of counsel in open session, without the intervention of an examiner or master. The complainant is apparently a secular, charitable corporation or association organized by a royal decree of the Spanish Crown on November 11, 1863, (2 Leg. Ult. Marina, Rodriguez San Pedro, p.

201), having its headquarters at Ponce in the Island of Porto Rico, and, as appears by letters and certificates from the insular authorities, duly authorized to continue business in the Island at and since the time of the filing of the suit. No point is made in the pleadings as to the capacity of the complainant to sue or be sued. The respondents are all citizens of Porto Rico.

It is a suit in equity praying that the Court declare that,
55 under the terms of a certain will to be hereinafter referred to, the complainant is the owner of a considerable amount of real estate, some five or six hundred cuerdas, in and near said Ponce, and that the possession thereof by the respondents under claim of ownership, under lease or otherwise, be declared wrongful complainant given the absolute possession of the whole of the same, and that an accounting he had between the parties and a decree rendered in favor of complainant for such sum as shall be justly found to be due it from the respondents or either of them.

It seems that some thirty odd years ago, there lived on the south side of the Island of Porto Rico, at or near the said city of Ponce, an old bachelor without family or heirs, by the name of Juan Bautista Silva, who owned a considerable amount of real estate and was possessed of cash and other property, though the former does not seem to cut much figure in this case, and by his will made on the 17th day of September, 1873, left it (save a couple of minor bequests) to a friend of his to be managed during the friend's lifetime, and half of the net product turned over to the complainant for use in its charitable work, the remaining half to be kept by the friend for his trouble. This friend, on taking possession of the property, was to make a will designating who should be his successor in the management and possession of the estate, and that successor on taking possession was to do likewise and name another successor, and so on—the estate to be kept together indefinitely. But it was provided that if a successor was not so named, then the property should go entire to the complainant if it still ex-
56 isted, but if not, then to certain other institutions or parties as will be gathered from the terms of the will itself, a translation of the material parts of which is as follows:

* * * * * * *

"Item. Inasmuch as I have no forced heirs, and what I possess I do not desire that it be dismembered, as it has cost me many years of work and economy, it is my deliberate will that after the extraction therefrom of the legacy hereinbefore mentioned for Maria Juliana and Romona Isabel, daughters of the emancipated Carmen, and two cows with calves, one for each of them, as also what is necessary to cover the expense of my illness and burial, then all my other remaining property composed of lands, animals and debts due me as mentioned, shall be delivered to, and my good friend Don Juan Apolinario Laboy of Ponce shall take possession and charge of the same, as he has merited my confidence for years and serves me and attends to me in my illness so desinterestedly, so I name and constitute him as my sole and only voluntary heir to said estate during his life (a quien nombro é insituyo por mi

único heredero voluntarfio de dichos bienes durante su vida) with the following precise conditions imposed on him:

First. That the net usufruct from said estate, after paying the municipal taxes and others imposed for the same purpose, be divided in two equal parts, one portion for said heir Laboy as a just recompense for his good administration and zeal for said interests, and the other portion to attend to the poor sick of the Santo Asilo de Caridad de las Damas de Ponce, which liquidation of products and delivery of this part shall be executed at the end of each year by said administrator heir without any other outside intervention of any kind, as a duty to be performed by the dictates of conscience and because the product of such properties as I leave depends more or less on the different season of the year being favorable or not and that the rain fail not in the district.

Second. As it is my special object that my properties (bienes) which have cost me so much privation and work, be not divided, I therefore desire that at the death of Laboy they shall pass with proper inventory and statement to the power and possession of the person who shall deserve the confidence of the said Juan Apolinario Laboy, who shall have the same power and privileges and hold it for the same object hereinbefore mentioned. To which end, at the moment of my death when he enters into possession of my estate, he shall precisely execute in due form his final testamentary disposition wherein he shall determine the person who shall succeed him in said charge or trust and whose power of substitution,
57 which I grant for such object unto Laboy, shall be transmitted by the latter, as I have stated before, to a person having his confidence, and so on successively, always by a formal will or other formal act which shall be executed by them successively at the moment they shall be put in charge as substitute heir, and—

Third. That if for any reason this condition of substitution is not complied with opportunely as I have recommended, or if by reason of any claim of my relatives or strangers to me or for any other reason or claim that it is or is supposed to be vacant, or the property unbequeathed by will, then the said inheritance or property that constitutes it, I want, and it is my will that in this latter case and at the death of the said Laboy, my first heir, the said estate shall pass to the said Santo Asilo de Damas in Ponce, which I name as my substitute heir, and in this case I especially recommend to this association that said estate be preserved as far as possible under good administration, and that only the net product obtained from same be employed in helping the poor sick of said establishment.

Item: I appoint as my faithful testamentary executor of this my final disposition, my said friend Don Juan Apolinario Laboy with fullest powers that right requires for free, frank and general administration, and relieving him of giving bond or other guaranty. * * *

At the same time and before closing this instrument, I the testator, declare, ordain and command that in case it shall come to pass that the inheritance shall fall to the Santo Asilo de Ponce, as I foresee, under the third condition of the sixth clause of this my

will, and if for any reason said charitable establishment shall not exceed or shall have then disappeared, in such case the inheritance shall go under the same conditions and powers to the Instituto de Segunda Enseñanza of Ponce, and when this latter shall unfortunately not be in existence, then the inheritance shall fall to the work or establishment most deserving and in most need in the said town of Ponce, because I was born in said district and all my best wishes are in favor of it, and therefore under no circumstances shall it be employed outside of the district under any pretext or for any reason."

About a year and a half after the making of this will, and on the 5th of May, 1875, the testator Silva died and the friend Juan Apolinario Laboy took possession of the estate and complied
58 with the terms thereof as to the special bequests, administered the estate during his lifetime strictly in accordance with the will, delivering to the complainant half of the income of the estate to its satisfaction. About this same time and in further compliance with the will, this friend Laboy made his own will, or some similar instrument, and in it named as his successor to manage this estate, his wife Dominga Fernandez Verdés, and set out in the instrument that in case of her death, he named in her stead his foster son José Laboy.

That the said first manager, trustee or whatever he was, Juan Apolinario Laboy, died in about the year 188– and his said wife at once entered upon the possession and administration of the estate under the terms of his said appointment, and in like manner fully complied with the terms of the Silva will, and gave half the product of the estate to the complainant, to its entire satisfaction, and continued so to do up to the 15th day of January, 1891, when she died. But this trustee or manager, whichever she was, in her lifetime failed to comply with the provisions of Silva's will which required her upon taking possession of the estate to make her own will or by some other such act to name her successor, and for this reason the complainant insists that the third or alternative provision of the Silva will, entitling complainant to the immediate possession of the entire estate, became operative, and that the foster son, José Laboy, by operation of law, faded out of the equation as soon as his foster mother took possession of the estate, but notwithstanding these facts,

The said José Laboy immediately upon the death of his said foster mother, went into possession of the estate and man-
59 aged it up to the time of his death, which occurred on the 13th day of November, 1903, and after taking possession of it, executed on the fourth of October, 1893, a public document called a "Substitution of Heirship," wherein he recited that having taken possession of said estate, under the provisions of the Silva will after the death of his foster mother, he must comply with the provision of the will of Silva in the appointment of his own successor, and for that purpose named his wife, the present respondent Josefa Diana y Martinez, and attempted to confer upon her the powers which he

claimed had been conferred upon himself by his foster father, Juan Apolinario Laboy, having made him alternative under the Silva will; and thereafter, just before the time of his death in 1903, he, the said José Laboy, made his own will and in it, after reciting the facts, attempted to ratify his act in substituting his wife as the trustee or manager under the Silva will.

That upon the death of her said husband, José Laboy, as aforesaid, his said wife, this respondent Josefa Diana y Martinez, claiming to act under the public document and will so executed by her husband, took possession of the said estate and has so continued up to the present time.

It appears also that the said José Laboy in his lifetime made long leases of different portions of the land in question, of some of which leases the complainant had notice and received its share of the rents therefrom, but shortly before his death the said Laboy renewed several of them without notice to the complainant, for long terms, and in several instances received his half of the rent in advance,
60 and in some instances even discounted his share to get the cash in hand. These leases are alleged to have been made for ridiculously low rentals. After his wife, the respondent Josefa Diana y Martinez took possession, she also without notice to the complainant extended some of these leases for long terms beginning in the future, also, as it is claimed, at ridiculously low rentals. Finally, without notice to the complainant, she attempted to, and did get under the local statutes of the Island, a possessory title to all the same, still without notice to the complainant,—when it received knowledge of her acts through the legal notice which the local court caused to be published, and then came in and opposed her application and defeated it. This respondent, Josefa, about the time she began to make efforts to get this complete title in herself, some time in the year 1904, ceased to make any payments of the usufruct or profits of the estate to the complainant, and the latter on ascertaining her intention in the premises, brought this suit.

The answer to the complaint admits the facts above stated as to the making of the original will and the substitution of the said Dominga Fernández Verdés as his successor by the said Juan Apolinario Laboy and the naming of his foster son, the said José Laboy, as alternative substitute as aforesaid, and that the said Dominga Fernandez Verdés did not execute any instrument designating any successor of herself to manage said estate, but alleges that her foster son José Laboy became entitled to manage said estate by reason of the fact that under her will made in 1869 (some four years before the making of the original (Silva) will), he, the said
61 José Laboy was her universal heir, and therefore became entitled to all her property, including whatever rights she had in the Silva estate, the latter of course being subject to a servitude or lien running with the land, to secure the payment of half the net usufruct to the complainant. The answer denies that the failure of Dominga Fernandez Verdes to appoint a successor in the management of the estate, as provided in the Silva will, in any manner violated its provisions, because (as alleged) the law ex-

isting at that time forbade perpetuities of any kind, and that therefore the first beneficiary Juan Apolinario Laboy in fact received the title in fee, subject only to the servitude to run with the land. In other words, the answer sets out and contends that under the Silva will the property went absolutely to the said Juan Apolinario Laboy with power in the latter to sell or transfer the same *inter vivos* whenever he chose, or to will it away or dispose of it in any manner, but at all times subject to the servitude in favor of the complainant for the net half of the usufruct thereof.

The answer further contends that the complainant ratified the act of the said José Laboy in so taking possession of the Silva estate and renting portions of the same to divers persons, by accepting its share of the rent with the full knowledge of the facts, and pleads estoppel against it in that behalf. And in like manner alleges the knowledge of the complainant of the taking possession of the said estate by the respondent Josefa Diana y Martinez, after the death of José Laboy, her husband, and the acceptance by the Com-
62 plainant of rents at such time in the premises, and because of this also, pleads estoppel against the complainant.

It further denies that the respondent Josefa Diana y Martinez has ever refused to recognize the rights of complainant, but claims that she is the legal owner of the said estate and entitled to the possession of the same, and admits that she obtained a possessory title thereto by due process of law, but denies that she acted fraudulently in so doing, as alleged, and asserts her good faith in the premises, because, as alleged, she always recognized the rights of the complainant.

It further admits the making of every lease set up in the complaint, but insists that the same are reasonable, considering the condition and the amount of improvement necessary to be made; that the lessees had no knowledge of any incapacity in the said José Laboy or his wife, the respondent Josefa, to make or extend the same; and that the complainant stood by her and saw the same made, and accepted rents thereunder and permitted without objection the lessees to go to great expense in and about such improvements, and that therefore complainant is estopped, etc.

Respondents further allege that on the 27th of January, 1905, complainant stipulated with one of the respondents, Julio N. Chardón, that in case complainant won this suit, the said respondent should be entitled to continue in possession of the portion of the land he had under lease, at an increased rental.

It further admits certain allegations of the bill about money
63 belonging to the estate, that was loaned out on mortgage and the property afterwards transferred to the party in possession of the estate, and admits that such property belongs to the estate and that complainant is entitled to half the product thereof. It closes by claiming that the only remedy complainant has is an action at law for its share of the profits, and that, at any rate, respondent Josefa Diana y Martinez has been in undisputed possession of the estate for more than ten years and that such fact gives her good title, etc.

At the trial, the complainant introduced in evidence all the several wills, documents, leases, renewals of leases, etc., referred to in the foregoing statement, and in addition, produced oral testimony which was taken down verbatim and filed in the cause. The oral testimony completely sustains the allegations of the bill, and, in the opinion of the Court, shows on behalf of the said José Laboy and his wife, the respondent Josefa Diana y Martinez, a gross, and in law a fraudulent disregard of the rights of the complainant in the premises, even if they were rightfully in possession of the land under the Silva will. These two persons, without notice to complainant, extended leases on different portions of this property for terms beginning at the end of the existing leases sometimes four or five years in the future, and running for periods from five to fifteen years, several of them to expire as late as the year 1919. Under the will this was grossly wrong, because should either of these managers die, (as José in fact did), it left the estate without means to induce anyone to manage it during the unexpired term of such leases. This was all done at a time when rental values of such lands, large portions of which are planted in cane and capable of being prepared for cane, were fast increasing in value and
64 when large portions thereof were worth as high as six to twelve dollars per acre, and even more. And some of the leases and extensions of leases were made for less than a dollar an acre, and none of them were made for anything like what the proofs show was the real rental value thereof at the time. A feeble attempt was made to show that at the time and under the conditions, the leases and extensions were reasonable, but it was a miserable failure. The best evidence of the inadequacy of the price is the fact that one of the lessees, Chardón, (Exhibit Q) came in during this litigation and agreed with complainant to increase the rental of the four hundred cuerdas he holds from $240.00 per annum to $1,350.00 per annum.

The assignments and leases introduced in evidence all bring the land into the possession of the parties named as respondents here. The proofs further show that in every instance these extensions of leases *in futuro* were made without the knowledge of the complainant, and the said José Laboy or his wife, the said Josefa Diana y Martinez, received their half of this ridiculously low lease money in advance, and at times even discounted it for cash in hand. It further appears that in all these leases or extensions of leases, the whole status of the estate was set out by proper reference and recitals of the material portions of the Silva will and the succession of managers and leases thereunder, and therefore it is manifest that every person who dealt with Laboy or wife was not only charged with, but in fact had actual notice of their situation and their powers and rights in the premises and the rights of this complainant.

The first question for the Court to determine is: What was the intention of the original testator Juan Bautista Silva as set out in his will, and what sort of a right under it did his friend
65 Juan Apolinario Laboy, and the complainant respectively have? From the terms of the will itself as above quoted,

and notwithstanding the not very specific phraseology of the scrivener who wrote it for him, it can be plainly seen that Silva intended the *poor of Ponce* to be the real beneficiaries, and that so long as it should be in existence, the complainant should receive one-half the profits of the estate to be expended by it for the benefit of said poor. It is equally apparent that Silva never intended to confer upon his said friend Juan Apolinario Laboy anything but a sort of life administration wage-profit in the estate, coupled with the duty to name anybody he had confidence in, as his managing successor. It may be that, strictly speaking, the legal title passed to Laboy on Silva's death, but the equitable title certainly went to complainant. So it can be seen that at all events he intended this first manager to possess the wage-earning interest in the estate during such friend's life, and that thereafter on the occurrence during the administration of any succeeding manager, of any of the contingencies he provides against in the will, the complainant's absolute right to the immediate whole title and possession of the entire estate was at once to arise. We cannot avoid this conclusion, notwithstanding the contention of counsel for respondents that failure of a trustee manager, to avail complainant, must occur exactly at the time of the death of Juan Apolinario Laboy. We think the will looked to these contingencies as possible of arising during an indefinite period in the future. We are sustained in this view fully, we believe, by the reasoning of Mr. Justice Gray of the Supreme Court of the United States in Barber *v.* Pittsburg, etc. Railway 166 U. S. 83, which opinion was delivered on a some-
66 what analogous state of facts, but is too long to be quoted here. Neither do we think it material to speculate as to whether the Silva will created an estate that can be called *fidei commissum.*

We do not think that there is anything connected with this case that makes it subject to either the English or American chancery rule against perpetuities or the civil law rule in that same behalf. In fact, the Supreme Court of Spain in the Roca case, Alcubilla, Tomo 7, Pag. 1013, December 29, 1886, held in a practically similar case to this that the essential character of the vinculation of property consists in the absolute prohibition to sell the same, and this we think is exactly the rule under the common law, and in the several States of the Union. That Court further held in that same case that the law of Spain of October 11, 1820, only rendered such lay or ecclesiastical institutions incapable of acquiring property when, under the laws and their own regulations, they could not dispose of the same, and it held in that particular case that as Roca left his property in favor of the sick poor domiciled in Badalona and appointed as administrators of the property, the parish priest and the vicar both present and future, and others, to devote the proceeds to that purpose, it was a legitimate gift and could not be attacked by the heirs of the testator. That court further held that there is nothing in the law of 1820 of Spain that prevents an annual or perpetual legacy to be made in favor of a charitable institution, provided that in the form of such legacy no direct or indirect

amortization of property is made, and it cited also a "sentence" of the same court of date November 3, 1890. Both these decisions were after the date of the will here, which was made, as will be seen *supra*, in 1873; and the last decision was after the adoption of the Spanish civil code of 1888.

In that same volume of Alcubilla at page 830, several cases from the Supreme Court of Spain are reported, showing that the law of 1820 preventing perpetuities and mortmains, which was
67 modified in 1855 and re-established in 1856, does not prevent even an institution, that might, because of its structure, be subject to the rule against mortmains, from receiving a gift such as this is.

The complainant, in our opinion, while it is apparent from the royal decree that created it,—*vide* reference *supra*, that parts of its management are in charge of the Sisters of Charity, who perhaps have extra-judicial mortmain succession under their customs, is essentially a lay institution. It is managed by a committee of ladies of the community, both married and unmarried, and without reference, so far as indicated by their charter, to their religious beliefs, and is kept up by public subscription and the income from gifts to it; and above all, it is fundamentally a charitable institution of the most unquestioned kind. Fu-ther, there is nothing in or about its charter or make up that necessarily keeps it from disposing absolutely at any time of the whole or any portion of its property, unless the conditions of any particular gift can be said to impose that condition.

Whatever may be the rule in Spain at the present time with reference to this sort of gift,—and we contend that it is the same as it is in the several States of the Union, and does not prohibit the same, we are of opinion that the general policy of the government of the United States must now apply, unless the local law supervenes to prevent, which we do not think is the case. And we find the law to be that not only are such charitable gifts as this permitted, but they are, as indicated by the Supreme Court of the United States, actually favored as being for public benefit. Instances of such gifts for scientific, educational, charitable and other purposes are of
68 frequent occurrence, as for instance the Stephen Girard gifts to Philadelphia, the Carnegie library gifts, the Smithsonian Institution at Washington, numerous hospitals and orphanages all over the nation, and many other such institutions.

To sustain complainant's contention in this case, one need do but little else than read the opinion in the great case of Executors of John McDonough *v.* Murdoch, 15 How. 366. It is a case bearing great resemblance to the one at bar. There it was squarely held in the opinion that if any condition was attached to the gift that was contrary to law, under the laws of Louisiana, such conditions would be considered as not written in the will, and that is exactly the provision of Spanish law and of the old and new code of Porto Rico.

Mr. Justice Gray in the case of Russell *v.* Allen, 107 U. S. 163, in an opinion that amounts in itself to a most valuable treatise on the

question we are discussing, reviews all the American and English cases on this subject of prohibition of perpetuities and mortmain donations up to that time (1882) and uses language particularly apt here, that: "The testator's directions as to the management of the income must be regarded as subsidiary to the general objects of the will, and whether legal and practicable or otherwise, can exert no influence over the question of its validity."

We are of opinion that this complainant has full capacity to receive this gift under this will and that, in any event, it only lies in the mouth of the residuary legatee or beneficiary, or the government itself, to question its possession, which can be done if the same is proper, at any future time, if complainant retains or uses it
69 contrary to the will. However, the respondents have not questioned complainant's right to take the property; they only contend that the first trustee or manager under the terms of the will, took the estate in fee subject only to a servitude in favor of complainant. With this contention we need have no quarrel, because whether to that extent it is right or wrong, we are utterly unable to agree with respondent's further contention that, subject to this servitude, any of the so-called managers could have willed away the property, save in the manner prescribed, or leave it to his heirs. The contrary intent of the testator is too apparent from the portions of the will above quoted, particularly the last clause that speaks of the Instituto de Segunda Enseñanza of Ponce, and other beneficiaries. We find nothing in the sections of the statutes of Porto Rico quoted by counsel for respondents that in any manner militates against the views here expressed.

As to that portion of the answer setting up the statute of limitations, we do not think the point is well taken. José Laboy and wife, it is true, went into possession of this estate and managed it, but they paid rents to the complainant during their management and this fact alone would, we think, be sufficient to show that they did not hold adversely in the sense of any prescriptive statute, but in addition, in every lease they or either of them made of the property, they set out in recitals that they held under the Silva will, etc. Lapse of time under circumstances like these is no bar to the complainant's right. Oliver *et al. v.* Piatt, 3 How. 333.

Now, it may be argued that, under the second clause of
70 the portion of the will above quoted, all that Silva's friend Laboy had to do was to name "a person deserving his confidence," to manage the estate, and that as he did name his wife for that purpose, he probably had a right to name any other person then in being and *sui juris,* as alternate. This might be admitted, and if his wife failed to qualify or to act, it might well be contented that the alternate could then qualify, take possession and proceed to act. But although he might have a right (which we do not admit) to name such alternate if such person was then living and of age, we do not think that he would have such right if the person was, as was really the fact in this case, a mere infant, because José Laboy, his foster child, was then but fifteen years of age, for which

reason Juan Apolinario Laboy, the foster father and Silva's friend, was forced to provide in the appointing instrument (Exhibit B), that should said child still be a minor when his alleged right to manage the estate accrued, Don Juan Vazquez would be curator of the minor's estate and presumably take charge for him. We do not think Silva ever contemplated such a proceeding.

Furthermore, according to the Silva will, each person that legally took charge of the estate became at once vested with the exclusive right to name the person of his own confidence who should succeed in the management, and for that reason we cannot avoid the conclusion that the moment Laboy's wife Dominga Fernandez Verdes took possession of the estate, all right in José Laboy, the alternate, ceased until thereafter by her specifically named as her successor in the manner provided in the will. She having died without naming any successor to manage the estate, we must, and do hold
71 that the contingency foreseen by Silva that the "condition of substitution is (was) not complied with opportunely," arose, and therefore the estate passed to complainant. José Laboy was a stranger without right when he entered the possession, and being so, he could not name anybody to succeed himself in the possession or management of it. He was a tenant at will, an occupant by license or acquiescence only, and subject to removal at the will of complainant. We must therefore hold that his naming of his wife Josefa Diana y Martinez as his managing successor was beyond his power, and that she is now illegally and wrongfully in possession of the estate.

The intention upon her part to hold adversely to complainant, is made manifest by evidence introduced in the case, particularly by certificates from the title registry office and the local insular court (Exhibits O and P), that when she attempted to get a posessorio title, which she in fact did secure, she alleged in her petition that it was "inconvenient" for her to show, as rejuired under the local statute, by what right she claimed to be in possession of the lands, and continued the same attittude when she thereafter endeavored to have the posesorio title ripen into a dominio title, but in which latter effort she was thwarted by the accident of complaina-t's manager seeing the advertisement which the local tribunal obliged her under the law to publish. We cannot see how she can claim good faith as to this, because she well knew how she came to be in possession, and good faith would indicate that she needed no better title than she had, if she was properly in possession of the estate.

On the whole case therefore we feel constrained to hold,
72 and do hold that the complainant is now vested with the legal title to, and the right to the immediate possession of the entire Silva estate under the Silva will and subject to the terms and conditions thereof, and subject also to its own act as to the right of respondent Julio N. Chardón under Exhibit Q, as we feel that under that Exhibit, complainant has estopped itself from any accounting as to him and has conceded him a lease and possession that is good in law under its terms.

As to the respondent Josefa Diana y Martinez, she will therefore be required to immediately give up the possession of the entire estate to the complainant, and she and the respondents Tomás Torres and Carlos Cabrera will be, and they hereby are required to account to the complainant in the premises as follows: The said Josefa Diana y Martinez for the reasonable rental value and income, as the case may be, of the portion, if any, of said estate, real or personal, held by her alone, since January 1, 1904, which we think is a reasonable date to begin such accounting, as she alleges in her application for possessory title made some short time previous to March, 1904, that she has held adverse possession of the entire estate since the 13th day of November, 1903 (presumably the date of the death of her husband); and the said Carlos Cabrera from August 1, 1904, for the portion held by him under Exhibit J, which is the date of the cessation of the receipt of rent by complainant in the premises, and the said Tomás Torres from August 1, 1905, for the portion held by him under Exhibit G, which is the date of the unlawful renewal of his alleged lease. And all the renewals of leases so made by either the said José Laboy in his life-
73 time, or since his death by his wife, the said Josefa Diana y Martinez, and under which or the renewal thereof, or under sub-leases of which, any of the respondents now hold any of the property, will be, and they are hereby cancelled and held for naught, and all respondents holding under any of the same will be, and hereby are required to immediately give up the possession of the lands, property and premises thus held, to the complainant, saving only the exception hereinbefore indicated with reference to respondent Julio N. Chardón; and all respondents will be required within twenty days from the filing hereof, to execute all necessary deeds, releases, quit claims or other instruments necessary, and in default of their so doing, the Court will, if necessary, appoint a person to make the same.

The accounting here provided for will be had as soon as may be, either by the Court or by any examiner or master to be appointed for that purpose, as may be thought best, and the cause will be retained for such purpose, and any other purpose in the premises that may prove to be necessary; and to this end only, this opinion will be held to be interlocutory.

Proper writs of possession, orders and decrees for the purpose of properly correcting the entries in the local land registry office, and to vest the legal title and possession of the entire estate under proper description in the complainant, and the cancellation of the leases and the doing of all other things hereunder as may be required, will be prepared and entered of record, and it is so ordered.

B. S. RODEY, *Judge.*

74 *Final Decree.*

(Filed February 25, 1907.)

ASOCIACIÓN DE SEÑORAS DAMAS DEL SANTO ASILO DE PONCE
vs.
JOSEFA DIANA MARTINEZ ET AL.

This cause having come on for hearing at the January 1907 Term of this Court upon the bill, answer, replication and evidence presented on behalf of both parties, and said parties having been fully heard by their respective counsel, and this Court having heretofore embodied its findings of fact and conclusions of law in an opinion filed herein on the 8th day of February, 1907; it is now hereby, in accordance with said Opinion, ordered, adjudged and decreed:

1.

That the equity of this cause is with the complainants and that the last will and testament of Juan Bautista Silva, made on September 17th, 1873, and described in said bill of complaint, created a valid trust in favor of complainant as to all the property of which said testator died seised or possessed, except certain legacies therein specified, plainly specified the manner in which said trust should be carried out through the medium of successive trustees, and further provided that said trust should terminate upon failure of any trustee to nominate a successor in the manner specified in that instrument, and the legal title to said property should thereupon pass to said complainant and merge in its beneficial interest, Provided said
75 complainant was still in existence at such time.

2.

That upon the death of Dominga Fernandez Verdéz, the second trustee, on the fifteenth day of January, 1891, said trust terminated and lapsed because of the failure of said second trustee to nominate a successor in conformity with the terms of said last will and testament; that the legal title to said described property belonging to the estate of said Juan Bautista Silva has been, by operation of law, vested in said complainant since said last mentioned date; and that the subsequent possession of said property by José Laboy and Josefa Diana Martinez has been wrongful and without authority of law, and their acts, as pretended trustees under said last will and testament, have been null and void, except in so far as the same were recognized and adopted by the action or tacit consent of the complainant.

3.

That the complainant, the Asociacion de Señoras Damas del Santo Asilo de Ponce, had on the fifteenth day of January, 1891, and still has full legal power and capacity to receive and hold the property in said bill described and that it has been and is now

vested with the full title in fee simple to all and singular the real estate and other property in said bill of complaint referred to, which is to be held upon the trusts imposed by the terms of the last will and testament of Juan Bautista Silva, dated September 17th, 1873, as in this cause construed and interpreted; which property is more particularly described as follows:

76 No. 1. A rustic property situated in the barrio "BOCA," municipality of Santa Isabel, containing one hundred and twenty-six (126) cuerdas, equivalent to forty-nine hectareas, fifty-two areas and thirty centiareas, and bounded on the north by lands of Carlos Cabrera, formerly of Jaime Bas; on the east by lands of Carlos Cabrera and the sea; and on the west by the lands of Julio Mercado, la Sucesión Monserrate and Don Rufino Tricoche.

No. 2. A rustic property situated in the barrio "BOCA," municipality of Santa Isabel, consisting of four hundred (400) cuerdas, equivalent to one hundred and fifty-seven hectareas, twenty-one areas and forty-nine centiareas, enclosed by a fence of wood and a hedge of maya, and bounded on the east by the bed of the Coamo River, lands of Baldomero Martinez and Rufino Tricoche; on the south by lands of the Sucesión Rivera, formerly belonging to Fernando Alvarez, lands of José Gracia Toro, the sea shore and lands of Cleubulino Colón; on the west by lands of Juan Cortada; on the north by lands of Augusto Benjamín y Presu (formerly of Luis Burgos) and lands of Ramón Torres and Juan Cortada.

No. 3. A rustic property in the barrio "COTO," Santa Isabel, enclosed by a fence and hedge of maya, containing fifty and one — (50½) cuerdas, equal to nineteen hectareas eighty-four areas and eighty-one centiareas, and bounded as follows: "From the stump of a Guayacán tree on the northeast corner at a point bounding with lands of Juan Cortada, thence in a westerly direction by the brook of said lands of Cortada to the stump of a Hueso tree forming a corner, point of the same Cortada, thence by the western
77 side in a northerly direction to the Guayacán stump which was the starting point.

No. 4. A parcel of land situated in the barrio Capitanejos, jurisdiction of Juana Diaz, containing one and one-half cuerdas, bounded on the south by the carretera which leads to Santa Isabel and on the remaining sides by lands of the Sucesión of Don Fernando Lebastide, which parcel is now leased to the owners of the Hacienda Bocachica.

No. 5. A mortgage for the sum of six hundred pesos provincial money, executed on the fifteenth of April 1878 by Don Federico Pascual upon a lot with a house thereon described as situated on Union Street fronting east in the City of Ponce, and bounded on the left by the lot belonging to the Señoritas Capó and by a lot of the Sucesión of Don José de la Rosa; on the west and rear by the same lot of said Sucesión, on the right by property of Don Joaquín Ferrán and the Sucesión of Rafael León, which mortgage is inscribed in the Registry of Property for the District of Ponce under number 4389, folio 93 and over of volume 110 of said city of Ponce, second inscription.

No. 6. A farm of six and one half cuerdas, with a wooden house thereon, situated in the barrio of Machuelo Abajo, jurisdiction of Ponce, bounded on the south by the public road, on the east by the river Bucaná, on the west by a lane and lands of the Sucesión Moreu, and on the north by another lane that divides it from several properties, which property is inscribed in the Registry of Property for the District of Ponce under number 1928, at folio 65 of book
78 39 of the city of Ponce, 3rd inscription.

4.

That the possessory title obtained by the defendant, Josefa Diana Martinez, to the two first pieces of property above described, as in said bill of complaint set forth, was obtained by fraud and is hereby decreed to be null and void and of no effect, and that the inscription of said title recorded in the Registry of Property, in pursuance of the decree in said possessory proceedings, is null and void and should be cancelled upon the Registry of Property. That the registry of said mortgage for six hundred pesos, provincial money, above described as property Number 5, should be cancelled in so far as the same appears in favor of any party other than the complainant, and the Registrar of Property should be directed to inscribe the same in favor of said complainant.

5.

That the inscription of said farm of six and a half cuerdas, described as property Number 6 aforesaid, should be inscribed by the Registrar in the Registry of Property as the property of the complainant, subject to the trusts referred to in paragraph 3 hereof, and that the fourth inscription of said property found on folio 65 book 39 of the City of Ponce should be cancelled by the Registrar.

6.

That each and every of the leases now claimed to exist upon any of the parcels of property hereinbefore described by the defendants, Carlos Cabrera y Paz and Tomás Torres, are null and void, because executed without authority and for an insufficient consideration, and the complainant is entitled to the immediate possession
79 of all said described property, with the exception of that held by the defendant Julio N. Chardón, whose possession is hereby declared to be rightful under the confirmation of his lease executed on behalf of the complainant since the beginning of this suit, and that said mentioned leases of defendants Cabrera and Torres should be cancelled upon the Registry of Property; and that said defendant Carlos Cabrera and Tomás Torres are hereby ordered and directed forthwith to turn over to the complainant, or its duly authorized agent, the possession of any and all such properties as they may now hold or control under the leases so declared to be void.

7.

That the provisions of the opinion of the court herein for an accounting between the parties is hereby vacated and revoked, a-d

that the defendant Carlos Cabrera do pay to the complainant, within ten days from this date, the sum of two thousand, two hundred and seventy eigh' and 50/100 dollars ($2,278.50) as rental of the parcel of one hundred and twenty-six (126) cuerdas of land leased by him at the rate of seven dollars per cuerda from August 1st 1904 to March 1st, 1907. That the defendant Tomás Torres do pay to the complainant the sum of five hundred and fifty-nine and 70/100 dollars ($559.70), as rental of the parcel of fi-ty and a half (50½) cuerdas of land leased by him at the rate of seven dollars per cuerda from August 1st, 1905 to March 1st, 1907, and that in case of non-payment of the amounts aforesaid, as herein provided, complainant may have execution therefor.

80 8.

It is further ordered, that the solicitors for the complainant are directed to prepare and present to the Court an order in proper form, directed to the Registrar of Property for said District of Ponce, specifying what entries are to be made or cancelled by virtue of this decree in the books of that Registry, and directing said Registrar to make the corresponding entries; and that the Clerk of this Court do also deliver to said Registrar a certified copy of the opinion of this Court herein and *of this Court herein and* of this decree, to be filed and preserved by him for inspection of all future searchers of title.

9.

It is hereby further Ordered, Adjudged and Decreed, that the complainant have and recover from the defendants all expenses necessarily incurred by it for the translation of documents and for the services of the official stenographer in taking and preparing the evidence in the same for the use of the Court as well as all which may be incurred for the making or cancelling of entries in the Registry of Property, as provided in the last preceding paragraph hereof, the same to be taxed under supervision of the Court and the total sum fixed, and in default of the payment of which complainant may have execution therefor. And complainant shall also recover its costs of suit.

10.

All matters and proceedings not provided for in the foregoing decree are reserved for such further order and decree as the Court may hereafter direct.

81 Done and ordered in open court at San Juan, Porto Rico, this twenty fifth day of February, A. D. 1907.

B. S. RODEY, *Judge.*

Petition for Appeal.

(Filed March 4, 1907.)

ASOCIACIÓN DE SEÑORAS DAMAS DEL SANTO ASILO DE PONCE
vs.
JOSEFA DIANA MARTINEZ ET AL.

In Equity.

The above named defendants conceiving themselves aggrieved by the decree made and entered on the 25th day of February, 1907, in the above entitled cause, do hereby appeal from said order and decree to the Supreme Court of the United States for the reasons specified in the assignment of errors which is filed herewith, and pray that this appeal may be allowed, and that an order be made fixing the amount of security which the said defendant shall give and furnish on said appeal, and that upon the giving of such security, all proceedings under said order appealed from be suspended and stayed until the final determination of the said appeal and that a transcript of the record, proceedings and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated this 4th day of March, 1907.

TORD, TORO & CANALES,
Attorneys for Defendants.

82 *Assignment of Errors.*

(Filed March 4, 1907.)

ASOCIACIÓN DE SEÑORAS DEL SANTO ASILO DE PONCE
vs.
JOSEFA DIANA MARTINEZ, JULIO N. CHARDÓN, CARLOS CABRERA, and TOMÁS.

The defendants pray an appeal from the final decree of this Court to the Supreme Court of the United States, and assign for error:

1st. That the Court erred in entering a judgment and decree in favor of the Complainant and against the Defendant, contrary to the law and the evidence of the case.

2nd. That the Court erred in not dismissing the bill of complaint and in not entering a judgment in favor of the defendants.

3rd. That the Court erred in holding to be the intention of Juan Bautista Silva under his last will and testament to appoint as his heir the institution called the "Asilo de Damas" and not Juan Apolinario Laboy; and further holding that under said will the

said Juan Apolinario Laboy was considered to be a mere trustee or manager of the estate devised.

4th. That the Court erred in not holding that under the said Silva will the "Asilo de Damas" only acquired a right of usufructus attached to the land demised and not absolute ownership.

83 5th. That the Court erred in holding that in this case it was not material to speculate as to whether the Silver will created what is called by the Spanish law a *fidei commissum.*

6th. That the Court erred in not holding that as long as there was in said Silva will a prohibition to alienate, which said prohibition was null and void according to the law of that time, the estate devised passed to the heir appointed free from such prohibitory condition and apt to be disposed of by said Juan Apolinario Laboy by any deed *inter vivos* or *causa mortis,* subject always to the incumbrance in favor of the "Asilo" for half the rents.

7th. That the Court erred in not applying in the construction of said — with the general rule of interpretation whereby when the language of the will is free from doubt and the intention of the testator is plain and intelligibly expressed, there is no need of interpretation.

8th. That the Court erred in not holding the words of the testament "universal heir" in reference to Juan Apolinario Laboy as conclusively establishing the intention of the testator to confer the title in fee of his estate to Juan Apolinario Laboy and not to the "Asilo de Damas."

9th. That the Court erred in not holding that the third clause or condition of said Silva will (whereby it was provided that in the failure of said Juan Apolinario Laboy to appoint his successor

84 as directed, the whole estate of said Silva should go to the "Asilo de Damas") could only have been construed as having reference to Juan Apolinario Laboy and not, beyond him, to any other person.

10th. That the Court erred in not holding that it was apparent from the said Silva will that the testator's intention was to devise the estate in fee (subject to certain conditions) to Juan Apolinario Laboy, giving only to the "Asilo" a right to half of the rent, the said right being an incumbrance upon the land.

11th. That the Court erred in holding that deficiency of consideration by itself, independent of any other fact, is evidence enough to render a contract void by reason of fraud, which was contrary to the law and the evidence of the case.

12th. That the Court erred in holding that the doctrine of estoppel had no application to the case in hand.

13th. That the Court erred in holding that in spite of the lapse of the required time Josefa Diana Martinez (one of the defendants) had not acquired title by prescription to the estate in the controversy.

14th. That the Court erred in holding that the mere fact that José Apolinario Laboy and wife paid to the "Asilo de Damas" its share of the rents, was sufficient to prevent Josefa Diana Martinez from setting up title by prescription to the Silva estate.

85 15th. That the Court erred in not holding that the payment of rent to the "Asilo" showed only the recognition of an incumbrance (right of usufructus) upon the land on behalf of said "Asilo" and never the recognition of the absolute ownership of the land on behalf of the same.

16th. That the Court erred in not holding that the payment of rent to the "Asilo de Damas" under said will was not inconsistent with the assertion of title to the land demised.

The defendants pray that the said decree may be suspended pending the appeal.

TORD, TORO & CANALES,
Attorneys for Defendants.

Order March 5, 1907.

ASOCIACIÓN DE SEÑORAS DAMAS DEL SANTO ASILO DE PONCE
vs.
JOSEFA DIANA MARTINEZ ET AL.

Order.

Upon application of Tord, Toro & Canales, solicitors for the defendants herein, the supersedeas bond herein on appeal is fixed at Ten Thousand Dollars ($10,000.00), said bond to be conditioned according to law and approved by the Court. The execution of the writ of possession heretofore issued in this cause is suspended pending the completion of such appeal, on condition that said defendants will not in any way despoil the properties in their possession by cutting cane thereon or removing it therefrom or otherwise, until the bond herein shall have been approved by the Court.

B. S. RODEY, *Judge.*

86 *Journal Entry, March 6, 1907.*

ASOCIACIÓN DE SEÑORAS DAMAS DEL SANTO ASILO DE PONCE
vs.
JOSEFA DIANA MARTINEZ ET AL.

The supersedeas bond on appeal herein is approved by the Court and filed and the petition for appeal allowed.

Supersedeas Bond.

Approved March 6, 1907.

ASOCIACIÓN DE SEÑORAS DAMAS DEL SANTO ASILO DE DAMAS DE PONCE
vs.
JOSEFA DIANA MARTINEZ, JULIO N. CHARDÓN, CARLOS CABRERA, and TOMÁS TORRES.

Know all men by these presents that we, Carlos Cabrera y Paz as principal, and Guillermo Shuck Olivera and Luis Casals Suarez,

as sureties, are held and firmly bound unto the "Asociación de Señoras Damas del Santo Asilo de Ponce" in the full and
87 just sum of ten thousand dollars ($10,000.00) to be paid to the said "Asociación de Señoras Damas del Santo Asilo de Ponce" its certain attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this the 5th day of March, 1907.

Whereas lately at a session of the United States District Court for Porto Rico, in a suit pending in said Court between the said Asociación de Señoras Damas del Santo Asilo de Ponce, complainants, and Josefa Diana Martinez, Julio N. Chardón, Carlos Cabrera, and Tomás Torres, respondents, a decree dated the 25th day of February, 1907, was rendered against the said Josefa Diana Martinez, Julio N. Chardón, Carlos Cabrera and Tomás Torres, respondents, and the said Josefa Diana Martinez, Julio N. Chardón, Carlos Cabrera and Tomás Torres having obtained from said Court an order allowing an appeal to the United States Supreme Court to reverse the decree and order in the aforesaid suit, and a citation directed to the said Asociación de Damas del Santo Asilo de Ponce is about to be issued citing and admonishing said complainant to be and appear at the United States Supreme Court.

Now therefore the condition of the above obligation is such, that if the above named Josefa Diana Martinez, Julio N. Chardon, Carlos Cabrera and Tomás Torres, respondents herein, shall prosecute said appeal to effect, and answer all damages and costs, if they shall fail to make good their plea, then this obligation shall be void, otherwise to remain in full force and effect.

C. CABRERA Y PAZ.
LUIS CASALS.
G. SCHUCK.

Sealed and delivered in presence of
GUILLERMO OPPENHEIMER.
ERNESTO FONT.

88 UNITED STATES OF AMERICA, *District of Porto Rico, ss:*

Carlos Cabrera y Paz, Guillermo Shuck Olivera and Luis Casal Suarez, the parties named as principals and sureties in the foregoing bond, being first duly sworn, each for himself says:

That he is a resident and freeholder in the aforesaid district of Porto Rico (city of Ponce) and is worth the sum of ten thousand ($10,000.00) over and above all his just debts and liabilities, exclusive of property exempt from execution.

A. CABRERA Y. PAZ.
LUIS CASALS.
G. SCHUCK.

Subscribed and sworn to before me this 5th day of March, 1907.

CARLOS J. CHARDON,

[NOTARY'S SEAL.] *Notary Public, Ponce, P. Rico.*

Approved this March 6 A. D. 1907.

B. S. RODEY, *Judge.*

Statement of Facts.

(Filed April 4, 1907.)

ASOCIACIÓN DE SEÑORAS DAMAS DEL SANTO ASILO DE PONCE

vs.

JOSEFA DIANA MARTINEZ ET AL.

This Court having heard and considered all the testimony offered by the parties to this suit finds the facts of this case to be as follows:

I. That some thirty odd years ago there lived near the city of Ponce, Porto Rico, an old bachelor without family or heirs by the name of Juan Bautista Silva, who owned a considerable amount of real estate and who was also possessed of cash and other prop-
89 erty, and that he died on the 15th of May, 1875.

II. That during his life-time, that is to say, on the 17th of September 1873, he made his last will and testament, which translated reads as follows:

Last Will and Testament.

In the name of God, Amen. Know all who this my will and testament shall see that I, Juan Bautista Silva, born in the district of Ponce and a resident at the present time of Santa Isabel, Island of Porto Rico, of single state, about fifty-eight years old, a legitimate son of Don Antonio and of Dña. Petrona Lugo, deceased, being sick in bed, suffering from a disease which God has willed to send me, but still in the full enjoyment of my mental faculties, memory and judgment, believing as I always have believed and acknowledged the Mystery of the Holy Trinity and other Sacraments pertaining to and acknowledged by our Holy Mother Church of the Roman Catholic Apostolic Religion, in which faith I have always lived and do solemnly promise to continue doing so until my death; which as I fear it will arrive, in order that when it come it find me not unprovided of a will; I do execute this my last will and testament in honor and glory to God and Holy Mother, our Blessed Lady of Mary, whose assistance and mediation I implore; and I do verify in the following manner.—First, I commend my soul to God and that the body be returned to the earth therewith it has been formed, and buried in the Cemetery of such place where my death shall occur, and do recommend unto my testamentary executor that my remains, if it should not be possible on the day of my
90 burial then at such other time when it can possibly be done, be buried in a tomb which either shall be bought or con-

structed for such purpose at the pleasure and will of said executor, and that I be given a burial with chant and three masses for so[illegible] of one peso each; and that one hundred pesos be distributed amongst twenty-five of the poor of the district of Ponce who deserve it in the judgment of the said party with the assistance of the local authorities to the better end of my object, and distribution to be made to all on the same day. Item. I bequeath half a real to each of the forced legacies and for religious purposes three pesos as it is ordained, this together with the alms I separate from all rights and actions on my property. Item. I declare that I have never been married and neither have I natural children of any kind, therefore I absolutely lack of forced heirs and what I possess at the present time I have acquired little by little, by virtue of my economy and diligence in working since my most tender youth as it is publicly known. Item. I also declare as property belonging to me legitimately acquired and which I possess undistributed, the following: this farm for breeding located in this ward of Boca, District of Santa Isabel, which by the name of Mejias and having an area of two hundred and eighteen and one half cuerdas, I bought of Don Federico Capó and his wife, as by public deed before the present writer, on the twenty six- of August Eighteen Hundred and Sixty-four, after that date I have increased through partial purchases which I have made according to documents which have been executed in my favor, therefore I have at the present time and in a body, and in this place, over four hundred and fifty cuerdas of which said farm or estancia is composed together with a dwelling house first and second floors of wood, roofed with shingles in bad condition with its kitchen; another small house made of palm boards and
91 straw of recent construction near the exit to the public road on lands included in said area, which I bought in this same past year of Don Ramón Torres, a pass to the watering place of the animals and for other purposes which are known as pertaining to the said property which is bounded by the river Coamo, with the said Dn. Ramón Torres and other neighbors.—I further have in this same ward in another portion at the place of Convento another area of land of about one hundred and twenty-six cuerdas also with pasture and brushwood, bought of different persons according to documents, of which six and one-half cuerdas I bought of the widow Don Manuel Cayetano who has not executed any deed in my favor as yet that I may deliver unto her fourteen pesos which I owe her; fifty and one-half more cuerdas belonging to me in this same district and place called el Coto and two cuerdas three hundredths of a cuerda at the ward of Machuelo Abajo District of Ponce which I bought of Ramón Santiago. I have several heads of cattle large and small, male and female, of which I have an inventory amongst my papers of which my executor has perfect knowledge, and besides some horses; and in cash I have two thousand and odd pesos, as from this amount I am attending to my sickness. Besides Don Fermin Estebea of Salinas is owing me a thousand pesos, Don Domingo Ríos of Ponce four hundred forty five pesos; two hundred fifty pesos, Dn. José Moreo which he borrowed for a

few days; and some other debts in my favor of insignificant amounts which appear on my papers; and I am indebted to no one, further than the fourteen pesos to the widow Cayetano.—Item. I desire and it is my will to bequeath as I do bequeath to María Juliana and Ramona Isabel, emancipated, daughters of Carmen, who was my slave, the first of which was married to Roque Colón and the
92 other single who live in this same place; fifty cuerdas of land for the two, otherwise twenty-five cuerdas to each one, which area shall be as-igned to them before the public road of Santa Isabel taking for such purpose twenty odd cuerdas which I lately bought of Dn. Ramón Torres and the rest shall be taken at the continuation of those lands included in this farm where it will be least prejudicial to the enclosures of same, bequeathing also to them the small house of wood and straw which I have had constructed recently at the exit of said lands of Torres, under the condition that they cannot dispose of the whole or part of said legacy before they reach maturity of age and should the death of one of them occur without leaving any children, that her part of the legacy be assigned to the other who shall survive, the whole of which is bequeathed in testimony of the affection which I bear towards them because they were born in my power and they have grown up under my care.—Item. As I lacked forced heirs and what I possess I do not desire that it be dismembered because it has cost me many years of work and economy, it is my deliberate will that after the extraction of the legacy hereinbefore mentioned for María Juliana and Ramona Isabel, daughters of the emancipated Carmen, and two cows with calves, one for each of them, as also is necessary to cover the expenses of my illness and burial, all my other remaining property composed of lands, animals and debts in my favor which I have mentioned, that they be delivered and that my good friend Dn. Juan Apolinario Laboy of Ponce take possession of same, who is deserving of all my confidence since long ago, serves and attends to me in my illness desinterestedly, who I appoint and in-
93 stitute as my sole and only voluntary heir to said estate during his life under the distinct conditions that I impose on him, as hereinafter shall be stated.—First: That the net usufruct from said estate after paying the municipal taxes and others imposed for the same purpose, be divided in equal parts, one portion for said heir Laboy as a just recompense for his good administration and zeal for said interests, and the other portion to attend to the poor sick of the Santo Asilo de Caribad de Las Damas at Ponce which liquidation of products and delivery of this part shall be executed at the end of each year by the same heir appointed administrator, without any other foreign intervention or interference of any kind whatever, as a duty to be performed by the dictates of conscience, and because the product of such properties as I leave depend more or less on the different seasons of the year being favorable or not and that the rain fail not in the district. Second: As whereas it is my special object that my estate be not dismembered or divided, which has cost me so much privation and work, at the death of Laboy that it pass under the correspond-

ing inventory and full statement of all the properties into the power and possession of the person who shall deserve the confidence of the said Don Juan Apolinario Laboy who shall have the same power and privileges and for the same object hereinbefore mentioned, for which object at the moment that in reason of my death he shall enter into possession of my estate he shall necessarily execute in due form his final will and testament wherein he shall determine the person who shall succeed him in said charge or trust, whose power of substituting which I grant for such object unto Laboy
94 shall be transmitted by the latter, as I have said before, to a person having his confidence, and by him to a person deserving his confidence and so on *successfully* always by virtue of testament executed by them successively at the very moment that they shall be put in charge as substitute heir, and Third: That if in reason of this condition of this substitution not being complied with opportunely as I have recommended, if by reason of any claim of my relatives or strangers to me, or for any other reason or claim it should be wanted to have it or suppose it vacant or unbequeathed by will the said heirloom or otherwise the estate which constitutes same, I wish and it is my will that in the latter case, and at the death of the said Laboy, my first heir, that said estate be transmitted unto the said Santo Asilo de Damas at Ponce which I appoint as my substitute heirs, most especially recommending in this case to this association that said estate be preserved as far as possible under good administration and that only the net product obtained from same be employed in helping the poor sick of the said establishment.—Item.—I appoint as my testamentary executor faithfully to comply with this my last will and testament, my said friend Don Juan Apolinario Laboy with fullest powers required by law, free and general administration and relieving him of giving bond or any other guarantee. Finally, by these presents I revoke, annul and declare as having no value or effect any other testament or will which I may have executed before or granted by verbal promise or in any other form whatsoever, and it is my sole desire that this present one be considered, which I execute of my own free will before the undersigned public writer of
95 this judicial district, Don Francisco Parra and witnesses summoned and requested to appear for such purpose and who are present, Don Angel Aguerrevere Doctor of Medicine, Don José Moreo, landowner, and Don Juan José Vazquez, landowner, all neighbors all of whom sign, and Señor Aguerrevere at my request, for though I know to sign the nervous state caused by my illness does not permit me to do so at this moment being at this my dwelling in the ward of Boca, District of Santa Isabel, on the seventeenth day of the month of December, Eighteen Hundred and Seventy Three. At this same act and before closing this execution, I, the testator, declare, ordain and command that in case the inheritance should come to the Santo Asilo de Ponce as I foresee in the third condition of article six of this my will and testament, if for any reason there shall not exist or should this same charitable establishment disappear then the said inheritance shall be

inherited under the same conditions and empowerments by the Instituto de Segunda Enseñanza, of Ponce, and when this unfortunately shall not be in existence, the said inheritance shall fall to the work or establishment most deserving and in most need of the said town of Ponce, as I was born in said district and all my best wishes are in favor of same, and under no circumstance shall it be employed outside of the district under no pretext whatsoever or for any reason.

And I, said writer, who am present at this execution with the witnesses to which I certify. I also certify to the fact that the testator, whom I know, notwithstanding his illness, is to my judgment and the witnesses' in the enjoyment of complete mental faculties and understanding and natural memory as observed by me.

As witness and at the request of Mr. Bautista Silva, who is
96 unable to do it.

A. AGUERREVERE.

As witness.
JOSÉ MOREO.

As witness.
JUAN JOSÉ VAZQUEZ, Mark.

Francisco Parra—Public writer on this date of the twenty-seventh of July Eighteen hundred seventy five I have issued copy with second seal, clause fifth at the end of this testament to Roque Colón husband of the legatee Juliana:

I certify.

PARRA.

NOTE.—In five sheets of paper, first and last of which having second seal I issued first copy to Don Juan Apolinario Laboy:

I certify:

PARRA.

This copy conforms with its original which is in protocol of the heir to which it refers corresponding to the Notary's office which was in charge of Don Rafael Leós y Paz, to which protocol I submit myself. In testimony whereof and by virtue of the authority granted me by the Honorable President of the Supreme Court of this Island on date of twenty-fourth of this month and year, and which authorization I leave attached to the papers of proof under number forty-eight. I issue this first copy at the request of Don Joaquín Ferrán in six sheets of paper which I rubricate, mark and sign at Ponce, on the twenty-seventh day of May, Nineteen Hundred four.

A mark.

(Signed) LCDO. MAEL LEON.

A Signature.

An excise tax stamp value fifty cents, rendered useless by Notary's seal.

III. That the said Juan Apolinario Laboy took possession of the estate so devised and complied with the terms of the said will as to the special bequest, delivering during his lifetime to the complainants half of the income of the estate to its satisfaction. About the same time he, in compliance with the will, made an instrument, and in it named as his successor or heir his wife Dominga Fernandez Verdez, and also provided in that instrument that in
97 case of her death before qualifying his foster son José Laboy shall be her substitute.

IV. That the said Juan Apolinario Laboy died in about the year —— and his said wife at once entered upon the possession and administration of the said estate under the terms of his said testament, and in like manner fully complied with the terms of the Silva will and gave half of the product of the estate to the complainants to its entire satisfaction, and continued so to do up to the fifteenth of January, Eighteen Ninety-one when she died.

That she in her life-time nevertheless failed to comply with the provisions of Silva will which required her upon taking possession of the estate to make her own will or by some other such act to name her successor or heir, but that she had in 1869 made her last will naming as her universal heir her foster son José Laboy Fernandez.

V. That the said José Laboy immediately upon the death of his said foster mother went into possession of the estate and after taking possession of it executed, on the third of October, Eighteen Hundred and ninety three a public document, a "Substitution of Heirship" wherein he named his wife, the present respondent, Josefa Diana Martinez, as his own successor and attempted to confer upon her the power which he claimed had been conferred upon himself by his foster father Juan Apolinario Laboy having made him alternative under the Silva will; that afterwards just before his death which occurred on the thirteenth of November, Nineteen Hundred and Three the said José Laboy made his own will and in it, after reciting the facts, attempted to ratify his said substitution of heirship.

VI. That upon the death of her said husband José Laboy as aforesaid, his said wife, the respondent Josefa Diana y Martinez took possession of the said estate and so continued on to the present
98 time.

VII. It appears also that the said José Laboy in his lifetime made long leases of different portions of the land in question of some of which the complainants had notice and received its share of the rents therefrom, but shortly before his death the said José Laboy renewed several of them for terms beginning at the end of the existing leases some times four or five years in the future and running for periods from five to fifteen years several of them to expire as late as the year Nineteen Hundred and Nineteen. The lesse-s under said leases are the several other respondents herein. That this was all done at a time when rental values of such lands as those belonging to the estate, large portions of which are planted in cane, and others capable of being prepared for cane planting, were fast

increasing in value, and when large portions thereof were worth as high a yearly rent as six to twelve dollars per acre and even more. That some of the leases and the extensions of the leases were made for less than a dollar an acre, and none of them were made for any thing like what the proofs show was the real rental value thereof at the time.

VIII. That one of the lesse-s (Chardón) came in during this litigation and agreed with complainants to increase the rental of the four hundred cuerdas he holds from two hundred and forty dollars per year to the sum of thirteen hundred and fifty.

IX. That in every instance these extensions of time in *futuro* were made without the knowledge of the complainants and the said José Laboy or his wife, the said Josefa Diana Martinez, received their half of this ridiculously low lease money in advance, and at times even discounted for cash in hand. It further appears that
99 in all these leases or extensions of leases, the whole status of the estate was set out by proper reference and recitals of the material portions of the Silva will and the successions and leases thereunder and therefore it is manifest that every person who dealt with Laboy or wife was not only charged with, but in fact had actual notice of their situation and their powers and rights in the premises and the rights of these complainants.

X. That the respondent Josefa Diana Martinez about the year 1904 obtained in her own individual name in *ex parte* proceedings a possessory title to the property, without notice to complainant. That afterwards she instituted, also without notice, proceedings *ex parte* to obtain a title of dominion to the said properties, but the complainant by chance having received knowledge of such proceedings intervened and such petition of dominion title was then denied by the Court in which it was presented.

The foregoing statement of facts is hereby certified to by the Court to be a correct and true statement of such.

B. S. RODEY, *Judge.*

100

ASOCIACIÓN DE SEÑORAS DAMAS DEL SANTO ASILO DE PONCE
vs.
JOSEFA DIANA MARTINEZ ET AL.

To the Clerk:

You are requested to make a transcript of record to be filed in the United States Supreme Court, pursuant to an appeal allowed in the above entitled cause and to include in such transcript of record the following papers to wit: All the pleadings in the case including copy of will in Spanish, the final decree and supplementary orders thereto, the petition and order of appeal, the assignment of errors, the statement of facts as certified to by the judge, the opinion of the Court, the citation and the return thereof.

TORD, TORO & CANALES,
Solicitors for Respondents.

101 In the District Court of the United States for Porto Rico.

ASOCIACIÓN DE SEÑORAS DAMAS DEL SANTO ASILO DE PONCE
vs.
JOSEFA DIANA MARTINEZ ET AL.

I, H. H. Scoville, Clerk of the District Court of the United States for Porto Rico, do hereby certify the foregoing one hundred typewritten pages numbered from 1 to 100 inclusive to be a true a- correct copy of the record and proceedings in the above and therein entitled cause as the same remains of record and on file in the office of the Clerk of said Court, in accordance with the præcipe filed by the respondents therein.

In testimony whereof, I have hereunto set my hand and affixed the seal of said District Court this 30th day of April A. D. 1907.

[Seal United States District Court for the District of Porto Rico.]

H. H. SCOVILLE,
Clerk of the District Court of the United States for Porto Rico.

102 UNITED STATES OF AMERICA, *ss:*

The President of the United States to La Asociación de Señoras Damas del Santo Asilo de Ponce, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington within sixty (60) days from the date hereof in a certain action in which Josefa Diana Martinez *et al.* are defendant and appellants and you are complainant and appellee, to show cause, if any there be, why the decree rendered against the said defendants and appellants, as in the said order allowing an appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Bernard S. Rodey, Judge of the District Court of the United States for Porto Rico, this fourth day of April, A. D. 1907.

[Seal United States District Court for the District of Porto Rico.]

B. S. RODEY, *Judge.*

Attest:
H. H. SCOVILLE, *Clerk.*

[Endorsed:] Filed Clerk's Office, United States District Court, April 6, 1907. H. H. Scoville, Clerk of the Court. Marshal's fees: 1 Service, $2.00. Expenses —.

103 Form No. 282.

Return on Service Writ.

UNITED STATES OF AMERICA, *The District of Porto Rico, ss:*

I hereby certify and return that I have served the annexed writ on the therein-named La Asociacion de S'ra Damas del Santo Asilo de Ponce by handing to and leaving a true copy thereof with N. B. K. Pettingill Attorney of said "La Asociacion de S'r's Damas del Santo Asilo de Ponce personally at San Juan P. R. in said District on the 6th day of April, A. D. 1907.

H. S. HUBBARD,
U. S. Marshal,
By PAUL A. ENGLISH, *Deputy.*

Endorsed on cover: File No. 20,714. Porto Rico D. C. U. S. Term No. 312. Josefa Diana Martinez, Julio N. Chardon, Carlos Cabrera, and Tomas Torres, appellants, *vs.* La Asociacion de Senoras Damas del Santo Asilo de Ponce. Filed May 14th, 1907. File No. 20,714.

In the District Court of the United States for Porto Rico.

No. 198. Ponce District.

ASOCIACION DE SENORAS DAMAS DEL SANTO ASILO DE PONCE
vs.
JOSEFA DIANA Y MARTINEZ ET AL.

It is hereby stipulated by and between counsel for the respective parties to the above entitled cause, that the Clerk of the Supreme Court of the United States be and the same is hereby authorized to correct the record by inserting the word "Pasen" after the word "Laboy" and before the word "Con", on page 16, line 14 of said record as printed. Reference is had to the attached certificate of the Clerk of the District Court of the United States for Porto Rico, which certifies that in the transcript of record the above mentioned word was omitted, and that the same should be inserted in order to make a correct copy of the original document in Spanish, now on file in his office.

FRITZ v. BRIESEN,
Counsel for Appellant.
GEORGE E. HAMILTON,
Counsel for Appellee.

In the District Court of the United States for Porto Rico.

No. 198. Ponce District.

ASOCIACIÓN DE SEÑORAS DAMAS DEL SANTO ASILO DE PONCE
vs.
JOSEFA DIANA Y MARTINEZ ET AL.

I, John L. Gay, Clerk of the District Court of the United States for Porto Rico, do hereby certify that in the transcript of record on appeal to the Supreme Court of the United States from this Court, as printed, there is omitted from page 16 thereof, line 14, after the word "Laboy" and before the word "con" the word "pasen" which should be inserted to make the same a correct copy of the original document in Spanish now on file in my office.

Witness my hand and the Seal of the District Court of the United States for Porto Rico, at San Juan, Porto Rico, this 31st day of March, A. D. 1908, and of the Independence of the United States of America the 132nd.

[Seal United States District Court for the District of Porto Rico.]

JOHN L. GAY,
Clerk of the District Court of the United States for Porto Rico.

[Endorsed:] File No. 20,714. Supreme Court U. S., October term, 1907. Term No. 312. Josefa Diana Martinez *et al.*, app'ts, *vs.* La Asociacion de Senoras Damas del Santo Asilo de Ponce. Stipulation to correct record & certificate of clerk. Filed May 26th, 1908.